

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

589

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,747

ALICE W. JOHNSON,
Appellant

v.

JEROME S. MURRAY,
Appellee

*Appeal from the United States District Court
for the District of Columbia*

APPENDIX

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 3 1969

Nathan J. Carlson
CLERK

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CIVIL DOCKET

United States District Court for the District of Columbia

PARTIES	ATTORNEYS	NUMBER
		2633-78
ALICE W. JEWELL v.	Samuel C. Klein. 1122 - 17th St., N.W.	ACTION FOR NEGLIGENCE - PERSONAL INJURIES (Injuries in Elevator). \$100,000.00.
JEROME G. MURRAY v.	Caliber & Stewart. 1215 19th St., NW	Atty. TAXED COSTS Marshal Clerk Witnesses Depositions Examiner Ct. Appls.
THE UNITED STATES OF AMERICA Third Party Deft.	Jury demand <input checked="" type="checkbox"/> Report Judgt. <input type="checkbox"/>	TOTAL

DATE	ACCOUNT	REC'D	DISB'D	DATE	ACCOUNT	REC'D	DISB'D
1962							
Sep. 14	Klein	10 00					
Sep. 14	U. S. Treas.		10 00				
1967							
Sep. 8	Grimaldi	5 00					
Sep. 8	U. S. Treas.		5 00				
Oct. 17	Grimaldi	1 35					
Oct. 17	U. S. Treas.		1 35				
1968							
Jul. 23	Klein	5 00					
Jul. 23	U. S. Treas.		.5 00				
Dec. 4	Klein	5 00					
Dec. 4	U. S. Treas.		5 00				
Nov. 4	Klein	5 00					

United States District Court for the District of Columbia

DATE	PROCEEDINGS	FEEs	TOTAL
1962			
Sep. 14	Deposit for cost by		1
Sep. 14	Complaint, appearance, jury demand	filed	1
Sep. 14	Summons, copies (1) and copies (1) of Complaint issued N.F. 10-5-62		2
Oct. 23	Summons, copy and copy of complaint. N.F. 11-13-62		3
Nov. 20	Summons, copy and copy of complaint issued N.F. 12-11-62.		4
Dec. 10	Appearance of Galihor & Stewart for deft.	filed	5
Dec. 20	Answer of deft to complaint; c/m 12-11-62.	filed	6
Dec. 20	Calendared (A.O.R.) (E)		7
Dec. 20	Notice of deft to take oral deposition of pltff; c/m 12-11-62. filed		7
1963			
Jan. 10	Notice by deft to take deposition of pltff; c/m 1-7-63.	filed	8
Feb. 1	Deposition of pltff by deft, \$50.60.	filed	9
May 13	Called. Ass't Pretrial Examiner		10
May 26	Certificate of Readiness of pltff; c/m 5-27-63.	filed	10
Jun. 3	Opposition of deft to certificate of readiness; c/m 6-3-63; file 6-3-63	filed	11
--			
July 25	Order overruling opposition to certificate of readiness. (N) Curran, J.		12
1964			
Feb. 17	Notice of taking of deposition under Rule 30, F.R.C.P. (fict)	McGuire, C.J.	13
Mar. 13	Deposition of W.J. Schwieder by defendant; \$17.50.	filed	14
July 2	Notice of deft to take oral deposition of Mr. Korshen; c/m 6-16-64.	filed	15
--			
Sep. 8	Deposition of Ralph Shumaker; (cost \$17.50)	filed	16
1966			
Jan. 19	Pretrial Proceedings.	Assistant Pretrial Examiner	17
Feb. 14	Copy of letter re witnesses for pltf.	filed	18
Feb. 17	Letter re witnesses for deft.	filed	19

March	1	Jury and two alternate jurors sworn; trial begun; mistrial declared; jury discharged; case passed for reassignment. (Rep: Elaine Wells)	Holtzoff, J.	
March	1	Order withdrawing a juror, discharging other jurors from consideration of case, and passing case for reassignment. (N)	Holtzoff, J.	20
March	2	Order striking case from ready calendar. (N) (AC/N) Holtzoff, J.		21
		(see next page)		
Mar	14	Notice of pltf to take deposition of deft and William T. Althoff; c/m 3/11/66.	filed	22
Apr	5	Transcript of proceedings 3/1/66; pages 56; (Rep: Elaine O. Wells) Court's Copy.	filed	23
Apr	25	Certificate of Readiness by pltf; c/m 4/25/66.	filed	24
Apr	28	Opposition of deft to ready certificate; P&A; N.C. 4/28/66. filed		25
May	20	Recommendation sustaining deft's opposition to certificate of readiness; treating case as called as of 3/1/66 and restoring case, upon recertification to ready calendar, to prior relative position thereon. (AC/N) Micro 5/23/66.	Asst Pretrial Examiner	26
May	20	Called as of 3/1/66.	Asst Pretrial Examiner	
May	24	Certificate of Readiness of pltf; c/m 5/20/66.	filed	27
May	25	Opposition of deft to ready certificate; c/m 5/24/66; N.C. 5/25/66. filed		28
June	10	Recommendation overruling objection of defendant to certificate of Readiness. (AC/N)	Pretrial Examiner	29
June	15	Objections of deft. to recommendation of Pretrial Examiner; c/m 6/14/66; MC 6/15/66.	filed	30
June	16	Opposition of pltff. to deft.'s objections to pretrial recommendation; c/m 6/15/66.	filed	31
June	22	Motion of deft. to add 3rd party deft; P&A's; exhibit; c/m 6/22/66; MC 6/22/66.	filed	32

June 24	Order sustaining deft.'s objections to recommendation of pretrial examiner; case not to be certified as ready for trial until after court rules on deft.'s motion for leave to add the United States of America as a 3rd party. (AC/N) (N)	
---	McGarraghly, J.	33
July 8	Opposition of pltff to motion to add 3rd party deft.; c/m 7/7/66.	
---	filed	34
July 15	Order adding the United States of America s Third Party Defendant. (N) (AC/N)	
	Curran, J.	35
July 22	Motion of pltff for reconsideration; c/m 7/21/66, MC 7/25/66. filed	
July 22	Third party complt; c/m 6/21/66. filed	37
July 22	Third party summons, copies (2) and copies (2) of complt issued ser 8/1/66; AG cor 8/1/66	38
Aug 12	Order denying motion for reconsideration of order entered July 15, 1966. (N)	
	Curran, J.	39
Aug 25	Deposition of deft and William T. Althoff for pltff. filed	
Sept 28	Stipulation extending to and including 10/31/66 time for 3rd party deft to answer 3rd party complt. filed	
Nov. 1	Stipulation extending time for third party defendant United States of America to answer third party complaint to and including November 21, 1966. (fiat)	
	Walsh, J.	42
Nov. 22	Stipulation extending time for 3d party deft United States of America to plead to 3d party complt to and including Dec. 6, 1966. (Fiat)	
	Walsh, J.	43
Dec. 6	Motion of defendant for summary judgment; c/m 12/6/66; exhibit A; statement; P&A; K.C. 12/6/66. filed	
Dec. 14	Stipulation extending to and including 1-15-67 time for deft.to respond to motion of U. S. for summary judgment. filed	
1967		45
Jan. 19	Stinulation of counsel extending time for deft. to respond to motion for summary judgment to and including 2-15-67. filed	
Feb. 8	Amended Third Party Complaint by deft. and Third Party Plaintiff; jury demand; c/m 2/8/67. filed	

Feb. 21	Stipulation extending time for third-party deft. United States of America to plead to amended third-party complaint to and including March 15, 1967. (Fiat)	McGuire, J.	48
Feb. 21	Consent order granting motion of third-party deft. for summary judgment; dismissing complaint. (N)	McGuire, J.	49
Mar. 16	Order extending time for third-party deft. to plead to amended third-party complaint to and including March 22, 1967. (Fiat)	McGuire, J.	50
---			51
Mar. 22	Motion of 3rd party deft USA to dismiss; c/m 3-22; P&A; M.C. filed		51
Apr. 27	Opposition of deft to motion of USA to dismiss and set aside consent order granting summary judgment; c/mailing; P&A. filed		52
May 5	Reply of 3rd party deft to 3rd party pltf's opposition to Motion to set aside consent order granting summary judgment; c/m 5-5-67; exhibit.	filed	53
May 22	Order denying motion of deft and 3rd party pltf to set aside consent order; dismissing original 3rd party complaint with prejudice; granting motion of 3rd party deft to dismiss amended 3rd party complaint with prejudice. (N) AC/N (Signed May 19, 1967) Jones, J.		54
June 2	Certificate of Readiness by plaintiff; c/m 6-1-67.	filed	55
June 5	Motion of deft. to vacate consent order granting summary judgment to 3rd party deft; P & A; c/m 6-5-67; M.C.	filed	56
Jun 13	Opposition of 3rd party defendant to motion of 3rd party plaintiff to vacate consent order granting summary judgment; c/m 6-13-67	filed	57
Jun 14	Transcript of proceedings. 5/24/67; (Reb; J. Maloney - Court's Copy)	filed	58
Jul 18	Order granting motion of deft and 3rd party pltf to vacate consent order granting summary judgment to 3rd party deft, dated February 21, 1967. (N) AC/N	Jones, J.	59
Aug 23	Recommendation restoring case to relative position on REady Calendar; recommending case promptly be set down for further pretrial. AC/N (Signed August 22, 1967)	Assistant Pretrial Examiner	60

Aug 25	Objection of deft. to pretrial Recommendation; c/m 8/25; M.C. filed	61
Aug 30	Reply of pltf to deft's objection to pretrial recommendation; c/m 8-20. filed	62
Sep 1	Memorandum and order rescinding paragraph 2 of Order signed 5-19-67; granting motion of 3rd party deft for summary judgment; revising order of 5-19-67 to include a dismissal of amended 3rd party complaint, with prejudice. (N) Waddy, J.	63
Sep 8	Notice of appeal by 3rd party pltf from order of 9-1-67; Deposit by Grimaldi \$5.00; copies mailed to Samuel C. Klein and Henry J. Monahan. filed	64
Sep 19	Cost bond on Appeal of deft in sum of \$250.00, with Hartford Accident and Indemnity Co., approved. (fiat) Curran, C.J.	
Oct 12	Stipulation to omit papers pursuant to Rule 12(a); (fiat) McGuire, J.	65
Oct 17	Record on Appeal delivered to U.S.C.A.	
Oct 17	Deposit by David E. Grimaldi, \$1.85	
Oct 17	Receipt from U.S.C.A. for original papers . filed	
Oct 23	Objections of deft. to Pretrial Examiner's recommendation heard & taken under advisement. (reporter: Barbara A. Williamson). McGuire, J.	
Nov 13	Order overruling objections to pretrial examiner's recommendation filed August 25, 1967. (N) McGuire, J.	66
1968		
Feb 1	Pretrial proceedings; deft. may have medical examination of pltf. Asst. Pretrial Examiner	67
Feb 16	Motion of deft. for summary judgment; notice; P & A; c/m 2-16 M.C. filed	68
Feb 16	List of witnesses per deft. counsel. filed	69
Feb 19	Copy of letter re witnesses for plaintiff. filed	70
Mar 8	Stipulation extending to and including 3/15/68 for plaintiff to respond to motion for summary judgment. filed	71
Mar 16	Opposition of pltff to deft's motion for summary judgment; cross motion for summary judgment; c/m 3-15-68; exhibits A thru I; affidavit; M.C.	72

Mar	21	Stipulation extending to and including 3-29-68 time for deft. to respond to pltfs. opposition to defts. motion for summary judgment and pltfs. cross-motion for summary judgment filed	73
Apr	5	Supplemental P & A of defts. in support of motion for summary judgment; c/m 4-5-68. filed	74
Apr	19	Statement of material facts as to which deft. contends there is no genuine issue; c/m 4-19. filed	75
Apr.	25	Opposition of pltff. to deft's. statement of material facts; c/m 4-23-68. filed	76
May	13	Order denying motion of deft. for summary judgment and denying the cross motion of the pltf. for summary judgment. (N) Holtzoff, J.	77
May	31	Letter re witness for defendant. filed	78
Jul	8	Letter re witness for deft. filed	79
Jul	12	Letter re witness for deft. filed	80
Jul	23	Deposit \$5.00 by Samuel C. Klein, Esq. for new trial.	
Jul	22	Jury sworn; two alternate jurors sworn; respite to July 23. 1968. (Rep: Isabel Warner) Ferguson, J.	
Jul	23	Trial respite to July 25, 1968. (Rep: Isabel Warner) Ferguson, J.	
Jul	24	Oral motion of defendant for a mistrial heard and granted; jury discharged; case passed for reassignment. (Heard in chambers and not reported). Ferguson, J.	
Sen	10	List of witnesses by pltf. filed	81
Sen	11	Letter in re witness by deft. filed	82
Sen	13	Letter re: witness by pltf. filed	83
Nov	4	Deposit by Samuel Klein in sum of \$5.00 for new trial.	
Nov	4	Jury & two alternates sworn; trial begun; respite until 11-5-68. (Rep: Marie Taylor) Matthews, L.	
Nov	5	Trial resumed; same jury and alternates; respite until Nov. 6, 1968. (Rep: Marie Taylor) McGarraghy, J.	
Nov--5--Release-of-attachment-against-Senate-Motors,-Inc--per-pltff's-counsel-- {flat}--			ERROR
			Heguire, J.

Nov 6	Trial resumed; same jury and alternates; respite until Nov. 7, 1968. (Rep: Marie Taylor)	McGarraghy, J.
Nov 7	Trial resumed; same jury and alternates; respite until Nov. 8, 1968. (Rep: Marie Taylor)	McGarraghy, J.
Nov 8	Trial resumed; same jury and alternates; respite until Nov. 12, 1968. (Rep: Marie Taylor)	McGarraghy, J.
Nov 12	Trial resumed; same jury and alternates, respite until Nov 13, 1968 (Rep: Marie Taylor)	Mc Garraghy, J.
Nov 13	Trial resumed; same jury and alternates; respite until Nov 14, 1968. (Rep: Marie Taylor)	Mc Garraghy, J.
Nov 14	Trial resumed; same jury and alternates; respite until Nov. 18, 1968. (Rep: Marie Taylor)	McGarraghy, J.
Nov 18	Same jury and alternates; trial continued to Nov. 25, 1968. (Rep: Marie Taylor)	McGarraghy, J.
Nov 25	Trial resumed; same jury and alternates; oral motion of Defendant for a directed verdict, argued and granted; Jury discharged. (Rep: Marie Taylor)	Mc Garraghy, J.
Nov 25	Verdict and Judgment for Defendant against Plaintiff by direction of Court. (N)	Mc Garraghy, J. 34
Dec 3	Certificate copy of judgment of USCA affirming judgment of USDC; copy of opinion attached.	filed 35
Dec. 3	Bill of Costs - an taxed by Clerk USCA in amount, \$13.63.	filed 36
Dec. 4	Notice of appeal by pltf; deposit by Klein \$5.00; copy mailed to Richard Galher.	filed 37
Dec 16	Designation by pltf. of parts of transcript to be included in record on appeal: c/m 12-13.	filed. 38
Dec 20	Appellee's counter-designation of additional parts of the pro- ceedings to be included in the record on appeal;c/m 12-19 filed	39
1969		
Jan 10	Consent order extending time to transmit record on appeal to February 15, 1969. (N)	Mc Guire, J. 40

1969	Feb 3.	Transmittal sheet from USCA returning original record including Transcript	filed	
	Feb 5	Exhibits Nos. 11 thru 15 and 17 of pltf.	filed	91
	Feb 7	Exhibits #23, 24 & 25 by deft.	filed	92
	Feb 11	Transcripts (9 vols.) of proceedings 11-4-68, pp. 1-45; 11-5-68, pp. 46-71-51; 11-6-68, pp. 76-51 thru 133; 11-7-68, pp. 134- 199; 11-8-68, pp. 201-286-A; 11-12-68, pp. 287-361; 11-12-68, 362-454; 11-13-68 & 11-14-68, pp. 455-517, 519-539 & 537-539-J; 11-25-68, pp. 541-580 & 581. (reporter Marie S. Taylor. Court's Copies.)	filed	93
				6

FILED

[Caption Omitted in Printing]

SEP 14 1952

C O M P L A I N T
(Negligence)

HARRY M. HELL, Clerk

1. Plaintiff is a citizen of the State of Virginia and defendant is a citizen of the District of Columbia, and the course of action complained of arose in the District of Columbia. The amount in controversy exceeds, exclusive of interest and costs, the sum of three thousand dollars.

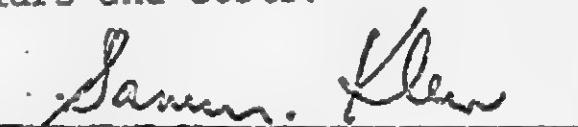
2. On October 20, 1961, plaintiff was in a building at 400 - 6th Street, N. W., Washington, D. C., where plaintiff was employed.

3. The building at 400 - 6th Street, N. W., Washington, D. C. was owned at that time by the defendant.

4. While plaintiff was in the elevator in the said building, the elevator fell from the fifth floor to between the second and third floors, due to the negligence of the defendant.

5. As a result of the fall of the elevator, plaintiff sustained severe and permanent injuries to her head, left shoulder, arm, wrist, and foot, was confined to a hospital for a protracted period, was prevented from transacting her business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the amount of over \$1,500.00.

WHEREFORE, plaintiff demands judgment against defendant in the sum of one hundred thousand dollars and costs.

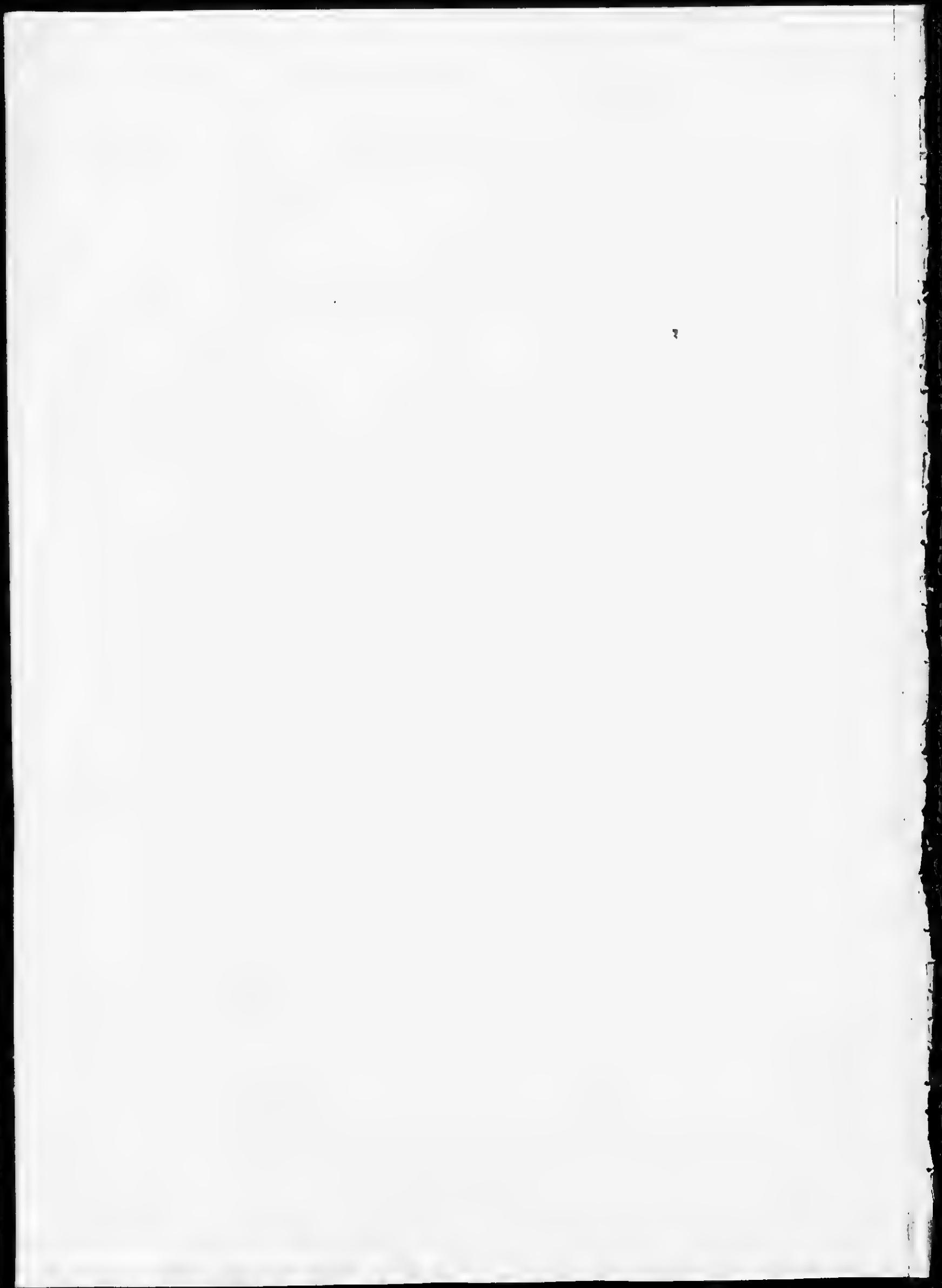


Samuel C. Klein
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff demands that all issues in this action be tried by jury.

Samuel C. Klein



IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF COLUMBIA.

ALICE W. JOHNSON,
2705 Arlington Boulevard
Arlington, Virginia.

PLAINTIFF

CIVIL ACTION NO. 2941-62

VS

JEROME S. MURRAY
303 Shoreham Building
Washington, D.C.

DEFENDANT

✓
FILED
 DEC 20 1962
 HARRY M. HULL, CLERK

ANSWER TO COMPLAINT

The defendant admits that the amount of this suit is in excess of \$3,000.00, and the other allegations contained in paragraph one of the complaint; he is without information sufficient to answer the allegations contained in paragraph two of the complaint; he admits that he was an owner of premises 400-6th Street, N.W., on the date alleged; he is without information or belief sufficient to either admit or deny the allegations with respect to plaintiff's alleged accident, or as to her personal injuries or financial losses alleged to have resulted therefrom; he denies each and every other allegation contained in the complaint.

GALIHER & STEWART

BY R.W.Galiher

Richard W. Galiher
1215-19th St., N.W.,
Washington, D.C. Fe-7-8330
Attorneys for Defendant.

[Certificate of Service Omitted in Printing]

COURT'S RULING

(Jury resumed places in the Jury box.)

THE COURT: Good morning. I appreciate your patience not only by holding the case for a week, but also the delay in bringing you in here this morning. I know you have been here since 10:00 o'clock. It is now 11:30.

As I indicated to you when we were together sometime ago, the parties had concluded all the testimony to be offered in the case, and there were some points of law which were going to be discussed by counsel with the Court, upon which the Court would be required to rule.

That's what has occupied the time this morning, although I will be frank and say to you that the issues which were discussed this morning had been the subject of my consideration and my study for some days in the past.

The defendant has made a motion that the Court direct you to return a verdict in his favor because the plaintiff has failed to establish a cause of action.

I think I explained to you that if the case went to you for your decision, the Court, among other things, would give you a fairly lengthy charge relating to the issues of fact which you are called upon to decide and also the law which should control you in your deliberations as jurors.

As you know from the opening statements of counsel and from the trend of the trial, the plaintiff's case rests

582 upon an alleged negligence upon the part of the defendant, or a failure of the defendant to perform a duty. You will recall that under the evidence in this case, this building, an office building at 400 Sixth Street, Northwest, was leased in its entirety to the United States Government and occupied in its entirety by employees of the United States Government.

You will recall that the elevator was operated by an employee of the G.S.A. You will recall that employees of the G.S.A. made periodic inspections of the elevator. You will recall also that the elevator was inspected periodically by the inspector of elevators of the District of Columbia Government. I have, without going into a detailed recital of the evidence, which I am sure you have in mind because of the close attention you have given this case throughout the course of the trial -- I have carefully reviewed all of the evidence, and before I get to that, I want to make clear to you that this is not a case of an elevator in an office building which is owned by one person and leased out separately to different tenants of the building, with respect to which the owner of the building has some obligation of maintenance and repair and so forth.

This is a case where the building was leased in its entirety to the United States, and there is no evidence in this case that the owner of the building was at any time

583 called upon to do anything with respect to the elevator, which he did not do. Therefore, I have come to the conclusion that the plaintiff has not shown any duty owing by the defendant to a passenger on the elevator who was an employee of the United States, and therefore, your verdict must be in favor of the defendant. You announce that decision, but you do it by direction of the Court, do you understand that, as a matter of law.

The Clerk will take your verdict.

THE CLERK: Members of the Jury---

MR. KLEIN: May I just say a word? Will your Honor make a finding with respect to the Lease as requested? I asked---

THE COURT: The Court finds, as a matter of law, under the terms of the Lease, the owner of the building was not required to take any further action to repair the elevator, under the circumstances.

MR. KLEIN: --to keep the elevator---? Thank you, sir.

THE CLERK: Members of the Jury, please rise.

(Jury members stood.)

THE CLERK: Members of the Jury, your verdict in this case is for the defendant by direction of the Court, and that is your verdict, so say you, each and all?

(Jury replied in the affirmative.)

S-1

HORACE F. STILLMAN

DIRECT EXAMINATION

BY MR. GALIHER:

Q Would you please give us your name and address and occupation?

A Horace F. Stillman, 127 Irving Street, Laurel, Maryland. I am chief elevator inspector for the District.

S-2

Q Mr. Stillman, how long have you been in the elevator business or in the inspection of elevators and work connected with elevators?

A I started in the District March 9, 1939.

Q Have you, from that time until the present time, been in the department with respect to elevator inspection?

A Yes, sir.

S-3

Q Have you brought with you the official records of the District of Columbia Elevator Department, kept in the ordinary course of your business, with respect to the elevator at the Stewart Building?

A Yes, sir.

Q I wonder if you would mind referring to those records at this time, if you please. Specifically, I would like to ask that you examine the record in 1956, the month of November 1956 and tell me if you have a record of the District of Columbia dealing with the inspection of the passenger elevator in the Stewart Building.

A November 27, 1956?

Q Yes, sir.

A Yes, sir.

Q Will you tell us please if an inspection was made of the elevator in the Stewart Building at that time, what the inspection entailed according to the record, and who made the inspection?

A According to the inspection, it was found to be in full compliance, and the inspection was made by Frank VanJune, S-4 who was an inspector at that time.

Q All right, sir. In full compliance with what?

A As per the inspection. In other words, it would involve machine room conditions, taking into consideration the machine itself, the controller, the condition of the machine room. He would then inspect the hoistway as for the cables, the condition of the hoistway itself, the tops of the cars; he would check the doors in the hoistway and their locks and check pit conditions and his overhead structure, in other words, was it clean? Did it need lubrication, things of that nature, and at that time he has got it marked O.K.

Q Would you state whether or not that would also include the attic where the idler sheaves were located -- the shaft and the pillow blocks?

A That would be the overhead structure.

Q Yes, sir.

A Yes, sir.

Q What sort of investigation would be made of that area?

A Visual, visual.

Q All right. Did there come a time in January of 1957 when an inspection was made and certain work was ordered to be done by your department? S-5 January 24th, 1957

A On January 24th, 1957 there was an order that was sent out.

S-5 Q Would you tell us please what work was ordered to be done at that time?

A Replace a missing hasp and lock on a machine room door; provide metal-mesh screening between the machine room and the hoistway; provide movable part in screen so worn shaft can be removed, if necessary; overhaul all hoistway doors and door bar locks and close the holes in the hoistway walls.

Q Would you tell us please if your record of March 1, 1957 indicates an inspection was made by one of your inspectors at that time and if the work previously ordered had been done.

A I have March 11th.

S-6 Q What does the inspection show as of that date?

A For this inspection, it showed O.K.

Q What was done on the occasion of that inspection?

A Same thing.

* * *

S-7 Q Would that have included the hoistway, up in the
attic?

A Yes, sir.

Q The shaft?

A Yes, sir.

Q Riding the elevator and inspecting the doors at
each floor?

A Yes, sir.

Q He going down into the pit? The machinery?

A Yes, sir.

Q Do you have a notation there in July of 1957
whereby there was some work ordered to be done by your
department?

A July 8th.

Q July 8, 1957?

A Yes, sir.

S-8 Q And that is the report of whom, Mr. Stillman?

A Mr. Ralph Shumacker.

Q What sort of an inspection did he make at that time?

A He made the same type of inspection again, and this
time he asked for the installation of wire mesh between
the motor room and the shaft.

Q Did he ask that anything else be done at that time?

A Yes. He said the address of this building is 460 Northwest, not 402. "Check and advise."

Q Was there anything else that he asked to be done at that time?

A No, sir.

Q Do you thereafter have a note, another inspection, September 12, 1957?

A Yes, sir.

Q Will you tell us what type of investigation was made and what the report showed as of that time?

A This would have been a re-check on work that was ordered.

Q The wire mesh work that you previously referred to?

A Yes. He has it down as "repairs being completed."

Q Was the inspection satisfactory? Was it O.K. in all respects?

A This time, all he would have done, he would have gone back to see if the wire mesh that he had ordered on the inspection had been installed.

Q I see. Do you have thereafter an inspection of November 5, 1957?

A November 5?

Q November 5, 1957 -- If I am wrong about that date---

A I have a November 5, 1957.

Q What type of inspection was made and by whom at that time?

A The same type of an inspection made by Ralph Schumacker.

Q What was the result of the inspection?

A "O.K." ***

Q Yes, sir. Would you tell us the date of the next inspection, please, sir, after that?

A The next one came on March 13th, 1958.

Q What type of investigation and inspection was made at that time?

A Same type of an inspection, everything was found satisfactory.

S-10 Q What was the next inspection after that date? When was it?

A July 18, 1958.

Q What type of inspection was made at that time and by whom and what was found?

A Ralph Shumacker made the inspection. He found it to be satisfactory.

Q The next inspection after that time?

A That would have been on November 5, 1958.

Q Who made the inspection, what was the nature of the inspection, and what were the results?

A Ralph Shumacker made the inspection. The inspection showed "satisfactory."

Q The next inspection after that, please, sir.

A The next one was made on March 10, 1959, by Ralph Shumacker.

Q What type of inspection was made?

A Same.

Q What was the result?

A "Satisfactory."

Q The next inspection after that.

A The next one was made July 15, 1959 by Ralph Shumacker; a regular inspection; found to be "O.K."

Q And the next inspection after that time?

A The next one was made on November 25th, 1959, by Ralph Shumacker. Both units were found to be "O.K." and he put down "see new address of owner."

Q The next inspection after that.

A That would be March 21st, 1960, by Ralph Shumacker. "Found to be O.K."

Q Then, what was the date of the next inspection?

A On July 13, 1968 he made an inspection.

The inspection was "satisfactory," but it was due for a governor test on the passenger elevator. This he ordered.

Q Was that test done according to your next record, and if so what was the results of the test?

A The test was completed on August 1st, 1960.

The test was "Satisfactory."

Q When was the next examination or inspection made?

By whom? What type of examination and what were the results?

A The next examination was on November 17, 1960 by Ralph Shumacker. "Both units were O.K."

Q The next inspection after that?

A The next one was on March 21, 1961 by Ralph Shumacker. "Both units were satisfactory."

Q Was that the same type of investigation, inspection?

A All these inspections on this type of sheet will involve the same.

S-12

Q When was the next inspection made by your department after that date?

A Well, on May 10th, 1961, he has a "special inspection," he's not written here.

Q What was the result of the special inspection?

A "Satisfactory."

Q What was the date of the next inspection of the elevator? Who made it?

A On July 13, 1961 by Ralph Shumacker. The elevators were in satisfactory condition, but he had called for a certificate for Elevators Number 1 and 2.

Q Will you state whether the next record shows the certificate was installed, and if so, what the date of

that was? Will you refer to a record of July 26, 1961?

A That would have been the day he checked the unit to see if it had a certificate, and that was the day he marked down, July 26th.

Q What was the date of the next inspection? What type of investigation was made? Who was the inspector and what were the results of his investigation or inspection? I have a reference, the last record was July 26, 1961.

A That was a re-check inspection for the Certificate. That wouldn't have been a full inspection.

204
THOMAS G. GERRITY

DIRECT EXAMINATION:

BY MR. GALINER:

Q Your name is Thomas G. Gerrity?

A Yes, sir.

THE COURT: You work for the General Services Admin-
istration?

THE WITNESS: General Services ---

BY MR. GALINER:

Q General Services Administration?

A Yes, sir.

Q For how long a period of time did you work for
205 General Services Administration?

A Ever since General Services took over Public Build-
ings Division. First, it was National Parks, then Federal
Works Agency and then General Services. I worked there until
1966.

Q During the time that you worked for General Services
Administration, will you please tell us the type of work that
you did and the departments that you were in?

A Well, let me go back to the beginning. In July of
'36 I entered the Government service as an elevator operator.
I served my apprenticeship and worked for nine months as an

6 elevator operator and then transferred to the elevator shop as a skilled laborer and worked my way up from there to supervisor when I retired in November of 1966.

Q Did that include maintenance and repair of all sorts of elevators?

A Yes, sir.

Q Did that include maintenance and repair of elevators in Government buildings and in private buildings leased by the Government?

A Yes, sir.

Q Will you tell us please whether or not during the course of your service with our Government, if you had occasion to teach or to train any persons in connection with the maintenance and repair of elevators?

A Yes, sir.

Q Did there come a time when you commenced to make periodic inspections on behalf of your department of the Stewart Building at Sixth and D Streets, N.W.?

A Well, after we had taken over the building -- any building for that matter -- one of my duties was to go in throughout the building occasionally and look it over and see that the men who were assigned to the building were performing their work.

Q Do you recall when you did thereafter make personal inspections?

A After the building was finally taken over and assigned to the GAO group, yes, sir, I did go down there approximately once a month or once every six weeks.

211 Q If you were told that the Government took over the building early in 1957, would it not enable you to pinpoint when you commenced your visits to the building?

A We should have after that when we took over the building, yes.

Q Will you tell us what, if anything, you did so far as inspecting the elevators at the Stewart Building after the Government took over the building?

A Again, sir?

Q What would be the nature of the inspection that you would make at the Stewart Building when you went there to inspect the elevators after the Government took over?

A Well, I would look to see if everything was as it should be according to the code of the elevators. I understand that there has been some talk about the doors of the elevator being loose. That could have easily have happened or been in existence when the Government first took that building over, so therefore if that was corrected by our group, then it would fall on me to see that the work was done correctly and properly. That is the only way I can answer the question, sir.

Q Would you tell us what type of inspection you would make when you would go into the building to examine the elevator?

A I would go to the machinery room and look it all over.

It would be mostly a visual inspection. I would touch bearings for heat.

Q Where would the bearings have been located?

A Pardon?

Q You said you would "touch bearings for heat." Where would the bearings have been located?

A These bearings would be up in the machinery room on the shaft, over which -- on the shaft and sheave over which the rope sat. The machine was down in the basement. The driving machine was down in the basement of this particular car and up in the machinery room was the sheaves, over which the cables would ride down to the car or down to the tunnelway.

These sheaves had to have bearings, lubricated bearings, and those would be the bearings that I would examine.

Q Will you tell us whether or not you examined these particular parts of the elevator on your first visit to the Stewart Building?

A Yes.

Q Will you state if you have any recollection concerning the condition of the elevator as you found it on the occasion of your first visit?

A It was in good condition when we first took it over, to my knowledge. If there was any defect, I would have called it to the attention of the inspectors.

213

Q From the time that the Government took over this building, Mr. Gerrity, did you perform these periodic inspections that you have told us about?

A I did, sir.

214

Q Do you recall, on the occasion of any of these inspections, finding anything wrong with the elevator?

A Wrong in a serious nature, no, sir.

Q Do you ever recall noting that the doors on any of the floors were in a position where a person could push the door into the shaft some distance?

A No, sir.

Q Will you state whether or not you, on your periodic inspection, would examine doors on the various floors?

A Yes, sir.

Q Will you state if you had occasion to examine the governor in the elevator?

A Examine it for what reason and in what respect, sir?

Q The area where the governor was located.

A It would be a visual inspection, yes, sir.

Q Will you tell us whether or not on the occasion of these inspections, if you ever found anything wrong with the governor?

A No, sir.

Q Or the governor switch?

A No, sir.

Q Will you state whether or not you ever found it imbedded with dirt?

A No, sir.

Q Would you have allowed anything ---

215 A --- imbedded with dirt? Just if I may -- imbedded with dirt. Just what do you mean by that?

* * *

Q Did you ever see an amount of dirt that was piled up around the governor which had not been removed ---

A No, sir.

Q --- in the vicinity of the seal?

A No, sir.

Q On the occasion of these inspections that you made, Mr. Gerrity, did you ever go to the vicinity of the buffer pad in the basement?

A I would have occasion to go into the pit, yes, sir. I would not perhaps go into the pit as frequently -- into the pit -- as I would go into the machine room.

Q How frequently would you go into the pit in the basement?

A Go in?

Q For the purpose of being where you could see the buffer pad?

A Well, if you raise the car and opened the basement door, one should be able to look in and see the buffer pad without going into the pit.

Q Well, were there occasions when you examined the buffer

pad?

A I can't say positively, but I must have done it as a part of my work.

Q Is that something that an inspector would ordinarily do?

A Yes, sir. ***

Q Do you recall how long it had been since you had the building under your jurisdiction?

A I can't say positively. It could be a month prior to that that the building was turned over.

Q Well, up to a month then before September of 1961 it had been under your supervision since the Government had taken it over?

A Yes, sir. ***

Q You have told us that up to approximately a month before September or October 1961, you made your periodic inspections of the building?

A Yes, sir.

Q What would you do, let us say, in the year 1961 if anything came to your attention when you examined the elevator, that in your opinion needed attention?

A I would have it corrected.

Q By whom?

A Well, if it were possible for our group forces to do so, I would have the group forces make the correction or repairs.

Q Do you recall in 1961 whether your group made any repairs to that elevator?

A Not any extensive repairs, no, sir.

Q Do you recall they did make repairs of some sort in 1961, before the accident?

19 Q May I call your attention to the fifth floor on the building, again, during 1961 and perhaps on the occasion of your last inspection of the building prior to the happening of this accident, do you recall noting any rollers on door hangers on the fifth floor door being worn out?

20 A No, sir.

Q Do you recall whether or not there was an upthrust adjustment missing off of each door?

A No, sir.

Q If you had noted anything like that, what if anything would you have done about it?

A It would be corrected.

Q Now may I take the fourth floor. Did you notice if there were any rollers on the door hangers worn out or an upthrust adjustment missing off of each door?

A If I may answer, I found no defect on any doors on that elevator on any floors and none at that time was called to my attention.

Q Well, sir, there has been testimony, and if I may, I would like to adduce myself to each of those.

A O.K., sir.

Q In the event perhaps it does refresh your recollection one way or the other.

A All right.

Q Did you notice on the fourth floor on the occasion of your inspections in '61 a bar bolt and the contact being loose?

A No, sir.

Q If such had been found by you, what if anything would you have done?

A I would have had them corrected.

Q Did you notice on the fourth floor, sheave bearings that were worn out in 1961?

A This is on the door?

Q Yes, sir.

Fourth floor.

A No.

Q Or did you notice that gibs were worn on that car door so that they were loose and would let the door swing in?

A Gibbs were where they may have been worn, but they were not worn to the extent that the door could be pushed into the hatch.

Q Drawing your attention to the third floor, Mr. Gerrity, were there any defects that you observed in 1961 in the rollers on the door hangers on that floor?

A No, sir.

Q There has been testimony that on that floor both adjustments were gone off the upthrust adjustment and the car contact and the car bolt were hanging loose. Will you state whether or not in 1961 you ever noticed anything of this sort?

A No, sir.

Q Now there has been testimony in this case by Mr. Schwieder that also on that floor, the floor sank underneath one's feet as you walked up to the hoistway door. Did you ever notice anything of that sort?

A I can't recall it, sir, no, sir.

Q Mr. Gerrity, on the afternoon of this accident, do you recall being advised that an accident had occurred at the Stewart Building?

A Yes, sir.

Q Do you recall whether or not you thereafter came to the building?

Q All right. And one would have, would they not, somewhat the same view if they were on this side of the pillow block looking at it this way?

A Yes, sir.

Q May I ask you whether or not on any of the occasions that you have been in this machine room prior to the day of the

accident, if you had looked at the bearings inside of the pillow block?

A You mean to take off those caps and look at them?

Q I mean to open the cap and look at the bearings.

A No, sir, I never made that a practice to take the caps off the machine to look at the bearings.

Q Will you state whether or not you had made a practice of examining the shaft on both sides?

A Yes, sir. If the shafts were visible, I would do so.

Q What sort of an inspection would you make of this shaft?

A It would be a visual inspection unless I had a complaint of a noise -- a noise or anything wrong in the machine room, it would be all visual.

* * *

228

Q Will you state whether or not during the entire time that this was under your supervision, this elevator, if you had any complaints with respect to noise or anything unusual in this area of the machine room?

A No, sir, I don't recall.

Q And would you have recalled if there had been any problem?

A Yes, sir, I would have. And I am quite sure it would be corrected at the same time.

Q Mr. Garrity, if there had been any wearing in this shaft on either side, would this have been something that you would have noticed?

A Yes, sir. If the shaft was exposed on the outside end of the pillow block, if one could see it, I would have seen it. If the shaft wore, this shaft was dropped down and a space between the top of the shaft and the top of the pillow block, the bearing would become visible and I would have seen it.

Q Will you state whether anything of that sort existed in the shaft or in that pillow block during the year 1961 prior to this accident?

A I can't recall any condition like that existing.

Q Will you state whether or not you would have recalled it and done something about it if any situation of that sort had existed?

A Yes, sir.

Q Will you state whether or not on any of the occasions when you made your inspection if you observed any tar or any powder like a fine mortar in the vicinity of the bottom of the stand on which the pillow block was sitting or on the floor?

A No, sir, I don't recall anything like that.

Q Will you state whether or not you recall any mortar coming out from the brick wall to which the beam supporting the pillow block was anchored?

A You mean this beam?

Q Yes, sir, or any bricks being loose on this side?

A Not prior to the accident, no.

Q If anything of that sort had existed prior to the day of the accident, what if anything would you have done?

A I would try to have it corrected. That is part of the building structure.

230 Q Would you state whether or not, on any of your previous visits, to the machine room, do I recall that you had ever seen this sheave in any position other than true center?

A It was always true when I looked at the sheave, yes, sir.

231 Q Would you state whether or not -- I believe you have already answered this, but I wish to make sure please -- did you ever find any evidence of wear on either of these shafts prior to the happening of the accident?

A You mean this exposed portion or the bearing?

Q I mean the place, for example, where the shaft broke.

A I can't recall of any wear on the bearing.

Q Well now, the bearing?

A Oh, no, on the shaft. On the shaft.

Q You saw no difference in size between the shaft as it came out of the sheave and at the point where it entered the pillow block?

A No appreciable difference, no, sir.

Q Would you have noticed something like that if there had been any difference prior to the accident?

A Yes, sir. If, as I said, if these ends were supposed-- were exposed, no cap, no nothing on it. I would be easily

visible. If this was covered -- can you hear me -- if this end was covered, then the indication would be on this side. This shaft would have to drop down and in dropping down, there would be a space here on the top side of the bearing and it would be, in my opinion, visible, so therefore I would have seen it.

When I say "wear," I am taking wear now in the thousands, which is difficult and almost impossible to see. When

Q Mr. Gerrity, on the *** occasion of your inspections did you ever find -- will you state whether or not you ever found any evidence of the bearing in the pillow block housing (indicating on diagram) in that area to have worn to such a point where it would permit the shaft to rock, first, one way and then the other?

A No, sir.

Q If that situation, Mr. Gerrity, had ever existed, would that have been something which a person would have noticed in going to the machine room?

A Yes, sir.

Q Would that also have been something which would be noticeable to a person who might be operating the elevator?

A It is possible, yes.

Q Can you tell us if that situation existed, whether it would be accompanied by high friction?

A If I understood your question, the shaft would be bearing on that pillow block rather than on the bearing surface.

If that it? In other words, the shaft would make contact with the metal of the bearing housing?

Q Yes, sir.

A That would create friction, yes.

Q In the creation of friction, will you state whether or not that would be accompanied by noise?

A Quite possibly, but it would be definitely accompanied by heat.

Q And will you state, if that situation existed, whether or not the shaft would have worked loose, if that situation existed, without breaking?

A Work loose?

Q Worked loose from the pillow block?

A You mean come out of the pillow block?

Q Yes.

A No, unless the support for the pillow block, in turn, became loose.

235
Q What, if anything, did you do as a result of finding that?

A I didn't do anything immediately because there were others there, Mr. Schwider, who for instance, who was apparently in charge at the time. I didn't do anything, take any action until later when my building manager told me to go ahead and make the necessary repairs.

Q Who were the other persons there when you arrived? You mentioned Mr. Schwider. Who else?

A Mr. Hyde, our area manager; Mr. Sheldon, I believe, your billing manager; I think his assistant, Mr. French; Mr. Galiferro -- that was one of the mechanics in the GAO group. I believe that is all I can recall, sir.

Q Is it a fact, Mr. Gerrity, that everyone who was there was from the GAO group, as you call it?

A As I can recall, everyone from the GSA Service.

Q Then a discussion was reached thereafter to do something with respect to repairs?

A Yes, sir.

Q What discussion was reached?

A That I was to go ahead and get the necessary men and material to repair the broken shaft, replace it.

36 Q What did you do as a result of those instructions?

A We contacted the Agriculture machine shop and asked the supervisor, if possible, to come up and inspect the job, to see what was necessary to replace the broken shaft.

Q Was that done, Mr. Gerrity?

A Yes, sir.

Q Do you recall who came up?

A I should -- I know his name well, but I just can't think of it.

Q Well, in any event what was done next, if you please?

A We started dismantling the machine. We secured the car and the weights and took the ropes off so that we could take the sheave and the -- shaft out of the bearing.

Q Will you tell us, please, if you did take the sheave and the shaft, did you say "out of the bearing"?

A Yes, sir, dismantle the bearing, took the caps off them so that we could get the shaft out, and the sheave out and take it to the machine shop and have it repaired.

Q Did you take both of them out?

A That is the usual procedure and I would say, yes, we did.

Q Did you examine the shaft that had broken?

A I believe I did, sir, yes.

Q Can you tell us what you found when you examined the shaft?

237

A The shaft had sheered right at the edge of the pillow block bearing.

Q Would you come down, please, and show us where that was?

A Right here (indicating), right on the edge of that bearing housing.

Q Would you mind repeating that answer?

A This shaft broke off right here on the edge of this pillow block and bearing housing.

Q Can you describe the appearance of the shaft, the size and any indication of -- well, suppose you describe it. What the shaft looked like.

A Well, it looked like any other ordinary shaft -- if you are trying to say or have me say that the shaft appeared to be worn excessively, no, it was not.

Q What about the size of the shaft overall, that had broken?

A It was approximately the same size as the rest of the shaft, as shown on the right-hand side of the sheave.

Q This shaft was approximately the same size as this shaft?

A Yes, sir.

Q Do you recall what the size of that shaft would be?

A I would say approximately three inches.

Q There has been testimony in this case, Mr. Gerrity,
38 *reduced* that the shaft on one side was rusted in diameter to three-fourths of an inch and on the other side one and one-eighth inches. Will you state whether or not you found anything ---

A Again, one side was three-fourths.

Q Three-fourths of an inch ---

A --- in diameter.

Q --- and the other side an inch and eighth. Did you find any such situation?

A No, sir.

Q Situation with that shaft?

A No, sir. If I may -- to find a condition like that would be sheer negligence on my part, on the part of my super-

visors, on the part of any man who ever entered that machine room to maintain it. On the part of the District Inspector also.

Because if I am assuming to be correct as approximately three inches in diameter originally, for a shaft to wear down to three-fourths of an inch -- that takes years for that to happen.

It is not -- care off overnight, over weeks or months -- for years for a shaft to wear down like that. That would be sheer negligence on my part.

Q Did you ever find other occasions of any of your examinations or on the day of the accident the shaft worn to that extent on either side?

A No, sir.

Q What did you conclude? Did you conclude what had caused the shaft to break?

A That was an old machine when we got it. Now when I say "an old machine," I am saying perhaps 30 years, maybe 40 -- I don't know. When we got it. O.K.?

It was machined -- the car run approximately 150 to 175 feet a minute, a slow car. The metal in those days, particularly the pillow block was cast steel. It wasn't hard metal. It wasn't as hard as the shaft. It was harder than the bearing.

The bearing is of soft metal, babbitt. But the pillow block housing in which the bearing was located is a very hard material. The shaft itself is of still harder material.

Now it would take considerable time for a shaft to wear from approximately three inches in diameter to a quarter

of an inch in diameter. I personally do not think at that time that the accident happened -- let me put it another way. If it had worn that much, even worn to an inch, the accident would have happened prior to the time at which it did happen. I don't think the one inch that was left of the shaft would support 4,000 lbs.

Q In other words, if it was worn down to that extent, the accident would have happened a whole lot sooner?

A It should have happened much sooner, yes, sir.

Q Much sooner. Did you consider the possibility of crystallization having occurred?

A Yes, as I started and I know I got a little off the subject. It was an old machine and as the machine turns over, there is a certain amount of friction. You can't get away from it. Friction develops heat and heat, in turn, has some effect on the metal. I am not an engineer or metallurgist or any of those, but my opinion at the time was that the shaft broke due to old age, crystallization, fatigue, any one of those.

Q What is crystallization?

A To me crystallization is the metal becomes extremely hard.

Q Is there any way of knowing that was happening?

A I had no way of knowing it. As I said, in my inspection looking at the machine was visual. I had no means or instrument to detect anything of that nature.

* * *

CROSS-EXAMINATION

241

BY MR. KLEIN:

Q What is your opinion?

243

A Well, as I said, I did not see the elevator originally. I saw it originally only after we had gotten it and perhaps when this work had been corrected. Then it was, in my opinion, in fairly -- in good condition.

Q It was in good condition. When did you first see the elevator?

A That would be hard to say exactly when. It would be shortly after the building was turned over to ---

Q Shortly after, and at that time it was in good repair?

A I would think so, yes.

Q So this statement is not correct, that the elevator equipment is in very poor state of repair throughout; is that correct?

A I am taking this statement here to mean the original inspection made by these gentlemen at that time, when they did go in -- when the Government was preparing to take over the building. This I am assuming at that time the inspection was made and the condition, as stated in this, was found. I did not have anything to do with that inspection, but later, afterward -- perhaps a month, maybe two months, I don't know.

Q A month later you found that it was in good repair?

A I thought in my opinion it was satisfactory, yes. I am assuming this work was corrected. I have to -- I can't

244

remember everything back that far. You are talking what -- '57?

(Looking) '57.

Q Well, when you first came there, you are saying the elevator was in good repair?

A That is my opinion.

Q You don't recall making any repairs. How about excessive gear and end thrust wear? This is the next sentence.

45
A I am having a difficult time recalling all of these. I have the impression that the machine was in good condition when our shop took it over. I don't say "excellent condition," but operating condition.

Q Did you find excessive gear and end thrust wear when you took it over?

A I can't recall it, sir.

Q You, I think, indicated you were there once a month -- you came, I believe you testified, shortly after the building was taken over, perhaps a month later and then you went there at least once a month or six weeks, is that correct?

A Yes, sir.

Q During the time that you came there, did you notice whether there was any excessive gear and end thrust wear?

A No, sir, if I did, I would have said something about it, and I don't remember saying anything about it.

Q Then is it your opinion that this was repaired?

A Pardon?

Q Is it your opinion that this condition which was described here when the building was taken over had been repaired accidentally?

A In my opinion, all these items mentioned here were taken care of.

Q How about the hoistway equipment, the next sentence? "Very dirty."

A That could exist, yes.

247 Q How about the next one, "grease and lint accumulations on rails, overhead," et cetera? Was that the condition?

A Sir, I cannot necessarily recall any of these conditions -- wait a minute, if I may. Try to understand, I did not go in on the original inspection of this elevator. I had no right to be in there. I only went in after, in my opinion, when everything was taken care of.

From that point on, which could have been a month or two months later, from that point on it is my opinion the elevator was in good operating condition.

252 Q Would you agree that it would not give service for the reasons given?

A It did give service for the few years we had it.

253 Q Weren't you charged with the maintenance of this elevator?

A Wasn't I what?

Q In charge of the maintenance of this elevator?

A Yes.

262 Q I'm not talking about the Lease. Were you told what you were supposed to do in that building?

A Maintain the elevator.

264 Q The question previously was that Mr. Schwieder had found plaster resting on the brackets, the counterweight; do you recall that question?

A Mr. Schwieder found broken plaster resting on top of the counterweight. Go ahead.

Q Yes. Did you find, ^{any} on any of your visits, and your answer was, "I can't recall."

A I do not recall. But may I answer it further?

265 Q Sure.

A Mr. Schwieder may have found plaster on the counterweight which could have fallen off the wall due to the jarring of a dropping car at the time of this accident happening. That very easily could have happened. The bracket could have been broken, parts of it could have fallen out on top of the car and on top of the counterweight. But previous to that, I do not recollect I myself finding any or the men telling me.

Now, if plaster falls off the wall, it's going to make a noise -- if it falls on top of the car it will make a noise. The operator is going to complain of something falling on top of the car. Not only that, the man, when he comes by on his maintenance is going to find plaster in the

pit. He is going to investigate and find out where it came from. I don't recall of the operator saying anything about anything falling on the car, nor of one of my men saying they found plaster in the pit, so I am assuming that when the elevator fell, this plaster was shaken loose and fell at the time the accident took place.

266

Q Is there a difference between powdered plaster which would show that it was grinding away and little pieces of plaster which would break away when the elevator fell off the mooring?

A The only thing I can tell you is what I just tried to explain: When you drop a piece of this dried-out plaster, it is going to show powder. There will be little pieces as big as your fingernail, or something like that, but there will also be fine powder. The adhesion that helps to hold it together will be gone.

Another thing, if this existed prior to this accident, this would have gotten onto the rails of the car, the main rails and the rails of the counterweight and, I don't know-- no offense, sir, but if you ever had sandpaper run across your shoe, you wouldn't understand what I mean: This would get in between the shoe and the rail. It would just simply destroy this shoe in a matter of time and also create a noise at the same time.

Now, we did not get a complaint from the operator that there was any noise in the hatch, other than ordinary

noise, to be found -- no squeal, no noise of any kind; nothing did we get from the operator. So, I must conclude that this plaster was not in the hatch prior to this accident.

Q These various defects that you were asked about individually, floor by floor, by counsel, you stated that you did not recall any of these, is that correct?

A No, sir, I don't recall any of them.

Q If any of these defects were to be repaired, who would have done the repairing?

A The chances are, we -- the group would have done it because it was a minor repair. It wasn't a repair that would require extensive equipment.

BY MR. KLEIN:

Q I believe you stated that you made only visual inspections, is that correct?

A Yes, sir.

Q Does that differ from the type of inspection that's made in a government building of this sort, this type of inspection?

A No. I made the same type of inspection in all the buildings, government or privately-owned buildings. I made no distinction as to who owned the building or anything else. The inspection by me was the same in all buildings. After all, it was my responsibility. Peoples'

lives were involved, so I don't see why I should discriminate between government-owned or privately-owned.

Q You said, however, that the Stewart Building was the building that was to be inspected by the District, is that correct?

A I think, sir, we should try to get the distinction and understanding between what I consider inspection on my part, and what the District Government considers inspection.

Q If you will, tell us briefly what is the difference?

A To me, I just go walking around to see all the equipment is operating correctly and right, that it's clean and lubricated, that there are no complaints by the operator and that's the extent of mine. Occasionally, I would check the cables, the hoist cables, and the governor cables for breaks or any defect that might appear, but not necessarily every trip that I made into the building would the cables be inspected, not each and every trip, not necessarily.

272 Q With respect to the break in the shaft, was that shaft greased regularly by you?

A The bearing there? Yes, it was. It had to be greased regularly. There was probably an opening that would receive the oil, drop it on top of the cap, receive the oil and retain it for a few days, and each time a man went there he always had a grease and an oil can with him. I couldn't

follow the man around to see that he did it. There are times you have to take a man's word for what it was. Over a period of time if you neglect it, something happens.

Q When you inspected this, did you find grease there?

A I found sufficient lubrication, yes, each time I went over there. Yes.

Q So, at the time of the accident when you checked it, it did have the grease and lubrication?

A If I definitely recall, it did have sufficient lubrication, yes.

Q Could the wear that caused the shaft to break have occurred suddenly?

A Could the wear of the shaft caused the break---

Q --which caused the break have occurred suddenly?

A No, I don't think so. Honestly, I don't think so. The break, in my opinion, was due to fatigue of the metal, or crystallization -- old age, if I may.

Q Could one have anticipated that at old age, that it might have broken?

A Pardon.

Q Could you have anticipated that with old age, the shaft would break?

A No, I could not.

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DAVID SAMPSON

DIRECT EXAMINATION

BY MR. GALIHER:

Q Your name is David Sampson? S-a-m-p-s-o-n?

A Yes, sir.

Q By whom are you employed?

A General Services Administration, Region III.

Q How long have you been employed by the General Services Administration?

A Slightly over 12 years.

Q What work have you done for General Services Administration for the last 12 years?

A I am on Elevator Repair.

Q ---where did you start to work, Mr. Sampson?

A In the General Accounting Office Group which is 5th and G Streets, Northwest.

Q What was your job at that time?

A As an elevator mechanic's helper.

Q What types of elevators did you have occasion to work on?

A Basically, all types. As far as manufacture, we had regular, which is, I imagine; the most common; the traction-drive machines. We also had hydraulic, we had basement drum machines.

Q What type of elevator did you have in this building at 6th and D?

A This was a basement traction machine which means the hoist motor itself is in a level lower than the elevator travel and powers the elevator by means of pulleys or sheaves that's run overhead.

Q Do you recall that there came a time when you were assigned to do work at the Stewart Building?

A Yes, sir.

Q After the Government took over that building, do you recall how frequently you had occasion to go to the Stewart Building?

A Yes, sir; routinely, one afternoon a week. In case of a service call or trouble on the elevator, we were on call 24 hours a day.

Q Will you tell us whether or not you recall making certain repairs to the elevator after the Government took over the building, around the first of January 1957?

A Yes, sir. When the elevator first came under GSA's maintenance, the outside doors or hatch doors, as they are referred to, were basically wire mesh construction, similar to a chain-link fence; and when the inspection was first done on the elevator, it was requested that the doors be sheathed in sheet metal, and these were removed and fully enclosed with sheet metal, closing inside and outside.

Q Do you recall who made that request of you?

A The gentleman's name? No, sir, I don't. It was through the D.C. Government inspection.

Q Do you recall exactly what you did to the elevator at that time?

A Well on the way over sir, we removed all the doors and they were sheathed in sheet metal, basically as a safety factor because it would have been possible for someone to put their hand, not their entire hand, but several fingers, through the openings; and as the elevator passed, it could have been the cause of an injury.

Q Will you state whether or not any repairs were done to a door bar or to locks at that time?

A All the locks, as far as I know, sir, were adjusted and repaired. I do not believe any of them were replaced due to the age of the elevator which makes it extremely hard to obtain replacement parts.

Q Do you recall making an inspection of the elevator before this work was done by you?

A Not as an inspection, no, sir. This is not in my---

Q What did you do as far as determining what needed to be done to the elevator?

A I went to the building with, at that time, my senior mechanic, and he checked what materials we would need, basically. It was, I guess, six blocks from our shop, and on all this type of job we go ahead and try to lay out a job plan as well as we can, basically, for our own help to keep from running back and forth, but we did get a list of materials and necessary equipment and so forth that we would need.

Q Do you recall if your repairs were done to all parts of the elevator that you found to be unsatisfactory?

A As far as I know was sir everything that the ⁹⁴ inspector had recommended was completed at that time.

Q And that is what inspector?

A From the District Government.

Q Do you recall if the elevator was inspected after you finished your repairs?

A Yes, sir, I believe.

Q Can you tell us whether or not the elevator was approved after being inspected?

A Yes, sir. The inspection on this elevator was, I believe, every four months, and this was a continuous inspection.

Q When you went there initially, can you tell us if you examined the elevator up in the attic, the equipment up there, the sheaves, the pillow block, the shafts?

A Yes, sir. This is routine maintenance procedure.

Q Will you tell us whether you found anything in need of repair at the time the Government took this building over, so far as -- and we have a diagram on the board here -- so far as the pillow block, shaft and the car idler were concerned?

A At that time, there was nothing, as I recall, sir, in any major state of disrepair. Basically, it was an older

building, there had been evidence of a previous fire in the building, and I don't believe possibly it had been maintained over the years up to what G.S.A. has set up in their standards. We did do considerable cleaning of the equipment, but as far as major faults in the equipment, we found none.

Q Did you put that elevator, with your senior mechanic, in such condition that it conformed to G.S.A.'s standards?

A Basically, yes, sir.

Q Did you also go down into the pit of the elevator on the occasion of your first inspection?

A Yes, sir. The car was checked thoroughly from top to bottom.

Q Do you recall doing any other work at that time?

A The only other thing that I recall right off-hand, which we have trouble with in many of our buildings, was in the hoistway or elevator hatch, where the brick work is done, there is usually a surfacing of plaster facing, and due to the building settling, this at various times will tend to buckle and come loose from the wall.

Q Where would that be located?

A This would be inside the elevator hoistway.

Q In the attic?

A No, sir; the shaft itself.

Q Inside the shaft itself. Was that situation rectified?

A The loose plaster was removed. We checked this monthly on all of our elevators. Whether it was replaced or not, I do not know. This would come under the plastering shop rather than the elevators.

Q Of G.S.A.?

A Yes, sir.

Q Do you recall noticing on that occasion any pulling away of the beams as a result of mortar or bricks being loose in the location of where the beam supporting the pillow block is located?

A No, sir.

Q You have indicated after this work was completed, the District of Columbia approved it. Will you state what your practice was continuously during this time after the Government had taken over this machine with respect to inspection and repairs or examination and repairs of the elevator?

A Well, G.S.A. has a basic schedule, a preventive maintenance program for all their elevators, and it varies month by month. You have a regular weekly program which you check the elevator pit for debris and trash as a possible fire preventive measure. You check the contacts on the control circuits, your wiring. Monthly you would check the

297 top of the elevator, all the lubrication points and the hoistway, as specified, for possible loose plaster or loose rail brackets. In this type of elevator which was strictly basically a single-speed, it had no automatic leveling device, and it did stop with a jolt basically, depending upon the operator. We still have several in use.

The bolts from time to time would tend to shake slightly loose, and this is also routinely checked.

Q What would you do when you found any bolt loose or anything wrong with the elevator?

A Tighten it.

Q When anyone from the District of Columbia Elevator Inspector's office desired to look at the elevator, what procedure would they have to follow:

A They would generally either call our shop in advance or if the gentleman was scheduled to be in the area, when he arrived at the building, he would call our supervisor and tell him that he would like to have two mechanics to inspect the elevator with him.

Q Why did that take place?

A Would you---

Q In other words, if the D. C. Elevator Inspector had come there by himself, would he have been able to get in the building and look at it?

A No, sir, he didn't have the keys. There was a key with the building guard for emergency use, but I don't believe it would have been given him as a routine.

Q The Elevator Inspector would then have to have someone from your shop with him each time he had his inspection?

A Yes, sir. The machine room and the overhead sheave room were both locked.

Q Do you recall if the elevator was thereafter inspected periodically by the District of Columbia elevator department?

A Yes, sir, this is required by law.

Q How frequently were you there when they would come to inspect?

A I believe I accompanied the inspector on five or six different occasions in his inspection.

Q Will you tell us whether or not the elevator was found satisfactory on the occasion of those inspections.

A Yes, sir, with minor variances, but this is also basically routine. Even our modern elevators when they are inspected, there are new innovations coming out in the Safety Code and this is one of the jobs of the inspector to check these things that he finds that are not quite according to the standards; and it was for us to either modify or replace these parts.

Q Would you do that if you found anything that either needed modifying or replacing?

A Yes, sir.

Q Drawing your attention to 1961, do you have any recollection other than the weekly examination of the elevator, going there on any other occasions?

299 A Yes, sir, we were called at least once a week, sometimes more often with minor problems on the elevator, either blown fuses; there were several of the old door bar bolts which were definitely worn due to age. This didn't, I don't believe, create a safety hazard, but the electrical contact, if the door wasn't shut fully tight, would not make contact, and thereby not allow the car to run.

Q Will you state whether or not you corrected these conditions?

A To the best of our ability, yes, sir. But, actually, to have made it fool-proof, it would have necessitated full replacement or a changeover of the old-type lock.

Q - Were you satisfied with its condition after rectifying--

A Safety-wise, yes, sir.

Q Do you recall, in 1961, going up into the attic on the occasion of your weekly inspections?

A We would go up there, sir, on our monthly inspection.

Q Excuse me. Monthly.

Will you tell us, prior to the happening of an accident in October, if you had ever noted on your inspection

up there any bricks or mortar loose or pulled away, where the beam supporting the pillow block fitted into the wall?

A No, sir.

Q Had you ever noticed any mortar on the pillow block or down perhaps on the floor, indicating it might have pulled away from the wall?

A No, sir. The only thing that I remember we did find up there one day was one of the glasses from the skylight had broken and there was some glass and debris there, but that was cleaned up.

Q During the year 1961, you had occasion to examine these pillow blocks?

A Yes, sir. When you say "examine" - we would lubricate those monthly.

Q Would you tell the Court and jury just exactly what you would do every month?

Would you mind coming down to the diagram, if you please, Mr. Sampson?

this lint. It is, after you build up an accumulation, a definite fire hazard, which is one thing that GSA itself is extremely strict on, that is, cleanliness of the equipment.

Q The pillow blocks here, if I remember correctly, had an oil cup-type, or grease cup-type fitting, which rather than using a grease gun, you remove the screw cap off the grease cups.

Q Mr. Sampson, this is a side view of the pillow block (indicating diagram) looking at it from this way---

A Yes, sir.

Q (Continuing) --as described by one of the witnesses. Is that your recollection of the way it was set up?

A Basically, yes, sir.

Q This, then, would be the shaft?

A This would be the end of the shaft. There was a cap which was bolted, I believe, onto the outside of each of these pillow blocks to act as a basic thrust bearing to prevent your shaft from having any in-play in it.

Q What do you mean by "having any in-play in it"?

A This would prevent the cap on the edge here (indicating), would prevent the sheave and shaft from having any side movement to get your cables "out of plumb" with your elevator cab.

Q Where would you inspect it so far as lubrication was concerned?

302 A - At the top of the pillow block here, sir, was where the grease cup -- some of them are on the top, some of them have an elbow-type fitting off to the side. I don't recollect exactly which type this was.

Q Will you state whether or not you examined the bearing within the pillow block?

A At one time I do remember, yes. We removed both of these end caps; the small opening in the bottom of the grease cup had become packed with old grease, and it was not feeding correctly and we did remove the grease cups, the end caps, and removed all this dried lubricant and relubricated the entire unit.

Q What was the condition of the bearing at the time you did this?

MR. KLEIN: Your Honor, may we have the time?

BY MR. GALINER:

Q As best you can, can you tell us approximately when this would be?

A This would have been right after I was transferred back to the Archives-Justice Group from Fort Meade, which would have been about April of 1959.

Q All right. Now, on the occasion of your monthly inspection, would you inspect the shaft?

A As far as inspections, no, sir, but as I stated earlier, we would clean the shaft and the entire sheave assembly of this grease and lint, and I believe any major deterioration would have been evident during this cleaning.

Q Will you state whether or not you ever noticed any major deterioration during the cleaning of the shaft and the lubrication of the pillow block?

A No, sir, only at the time when we did remove these in-caps. Being a poured babbitt-type bearing, your entire

assembly rests basically on the bottom of the bearing, and you will find, between the top of the shaft here and the inner edge of the top bearing in the top of the shaft, you'll have a 1/16 to an 1/8 of an inch settle, where the shaft has settled in the bearing.

Q Did you state whether that was in need of replacement?

A No, sir.

Q Did you ever, prior to the accident in October 1961, note any evidence of deterioration on the shaft itself?

A No, sir, I didn't.

Q --on either side?

A No, sir.

Q Did you ever notice any brick or mortar where the beam was attached, to be loose?

A No, sir.

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Q Will you state how long it had been since you had last examined this elevator prior to the happening of the accident on October 20th, Friday, 1961?

A We had been up there the previous week.

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Q Do you recall what your examination had consisted of, the previous week?

A This would have been our basic weekly maintenance, which would have included the cleaning of the elevator pit, checking the control contacts, wiring, the lights inside the elevator hoist-way.

Q And would that also have included your going to the attic, this area (indicating)?

A On that particular week, no, sir, I don't believe so. That would have been about three weeks prior to the accident.

Q What was the condition of the pillow block, the car idler and the beams three weeks prior to the accident?

A I noticed no -- nothing out of the ordinary.

Q Did you make your regular complete examination of that area on that occasion?

A Yes, sir. It was cleaned and lubricated.

Q Will you state whether you would have noticed any deterioration in that shaft three weeks prior to the accident?

A If it had been evident, yes, sir because it was cleaned three weeks prior to the accident.

Q Will you state whether or not on the occasion when you had examined the elevator, as you have indicated, about 3 weeks before this accident, if you went down into the pit in the basement.

A Yes, sir, this was a weekly---

Q Would you state whether or not at that time you had occasion to look at what is called the buffer pad?

A In this car actually, the buffer consisted of two large coil springs in the pit. As far as checking them, no, sir, I don't believe so. We cleaned the pit on a weekly schedule.

Q Did you ever have occasion to examine the buffer pads?

A Actually, as far as examining them, no, sir. I never found the need -- unless you would find one loose or something.

Q Did you ever find anything wrong with them?

A No, sir.

Q --such as real bright marks on the buffer pads where weights might have struck?

A Yes. On occasion, the weight did strike the springs.

Q What did you do as a result of that?

A Actually, there was nothing that you could have done due to the age of the elevator and the type of installation. When the elevator was level with the top floor, you had slightly over 11 inches of clearance between the top of the elevator cab and the ceiling.

Q Was there anything dangerous, from a safety standpoint?

A Should a mechanic be working on the top, yes, sir.

Q But only if a mechanic were working on the top?

A No. The counterweight was purposely hung low so that the springs would strike, or the counterweight would strike the buffer springs to prevent the elevator from going into the ceiling.

Q That was the purpose of the buffer springs, for them to strike there and prevent it from going into the ceiling?

A Under that installation, yes, sir.

Q Let me specifically, if I may, call your attention to the occasion when you said you had been there within -- Did you say a week?

A Yes, sir.

Q You had been there within a week. You don't recall what you did at that time?

A As far as I know, that would have been the basic, weekly maintenance. I'm not sure which week of the month it was, but it was set up basically for the fourth or third week of each month -- we would do our monthly program.

Q It would have been no longer than four weeks before the accident and less perhaps, depending on your schedule?

A I believe it was three weeks because it would have been about another week after the accident that we were scheduled to go back.

Q Did you make your attic-to-basement inspection at that time?

A Yes, sir.

Q Did you examine the door on the fifth floor?

A On the monthly tour of maintenance, yes, sir, all doors were checked.

Q Would you tell us on the examination previous to the accident, whether you noted any rollers on the door hangers completely worn out.

A Completely worn out? No, sir. There was wear evident on several of the rollers.

Q Did you notice any upthrust adjustment missing off of each door?

A This upthrust adjustment, I believe, is possibly what you're referring to, what we refer to as "eccentrics," which are small rollers which ride underneath the elevator rail on an "eccentric cam" to maintain a level operation of your door; and I don't recall, on this particular type of door which was a single, sliding panel, hand-operated, I can't recall actually whether it had eccentrics on it.

Q What about door guides or gibbs?

A Door guides are generally a square fiber or composition block. There is usually one attached to the front end, trailing edge of each door, which ride in the track in the floor plate. This prevents your door from swinging into the hoistway.

Q In the event anything unsatisfactory had been found by you with respect to a door on the fifth floor, what if anything would you have done?

A Had it been a safety hazard, it would have had to be corrected immediately.

Q What about the fourth floor? Will you state whether or not on the occasion of the examination previous to the accident you had found any rollers on door hangers completely worn out and an upthrust adjustment missing off of each door?

A I don't recall ever finding any rollers completely worn out. There was wear evident on several of them over the period of time, and this again was a case where, being an elevator -- I have seen no evidence of the actual installation date, but I have heard qualified men say it was installed somewhere around 1910 -- the parts just weren't available for this particular elevator.

Q Did that wearings of that sort constitute a safety hazard?

A No, sir.

Q What about the third floor. I will ask you the same question.

A I believe that basically, the floors were in about the same condition. There were rollers which had worn flat spots on them, but not being a power-operated door, this did not constitute any hazard as far as stalling the door electrically and burning up any equipment.

Q Were there any occasions when you or anyone with you did anything to these doors?

A Yes, sir. On our monthly tours, the door rail which the door hangs on was wiped down and relubricated.

The bearings, or bearing surfaces in the rollers -- if I remember correctly, some of the rollers had been replaced with a solid-type roller to remove the bearing problem.

Q Will you state, if you know, who did that?

A On one door, I believe I was involved in the job with Mr. Murphy who had been senior mechanic in the General Accounting Office Group. The rollers were made -- any parts like this that we have to have specially made, the G.S.A. machine shop at the Agriculture Department machines for us.

Q Do you recall when that was done?

A No, sir; I don't.

Q What about the first floor. I will ask you the same question concerning the door on the first floor.

A The first floor door would quite naturally have been the door that got the most use, being the street-level floor, but I don't believe there was anything out of the ordinary, as far as extreme wear would have been concerned.

Q On the occasion of your various trips to this building prior to the accident of October 1961, will you state whether or not you ever found the car idler out of alignment or--

A No, sir.

Q --on an angle?

A No, sir, definitely not. Had it been on an angle it would have been an extremely short period of time until the cables would have worn the grooves out of the sheave.

Q Did you ever find any evidence of any wearing by cables of the grooves on the sheave?

A No, sir. You would have found an extreme metallic dust condition on the entire mechanism surrounding the sheave.

Q Mr. Gerrity has testified that he came to the scene of this accident on Friday afternoon, examined the scene, made certain repairs. He did not draw this diagram -- it was drawn by someone else -- but he has testified that he noted that the car idler sheave was on an angle such as appears here (indicating), and he found that the shaft on this side of the pillow block, referring to the left side, had broken. He also found wires come down in this area on top of the pillow block, and also noted that the car was down below, I believe he said, the third floor -- I'm not sure of that.

Based upon your knowledge, experience and training, and based upon your examination and repair of this elevator as you have indicated, will you state whether or not you have an opinion as to what caused the shaft to break on the Friday afternoon of the accident?

THE WITNESS: Well, sir, I am not a metallurgist, but we have had an occasion with the same type of steel in breakpins where, through a constant stress over the years, that the metal would tend to, as we sent it out for

repairs or replacement for pins, where it would come back from the examination at the Machine Shop that the steel had crystallized.

Q. What do you mean by "crystallization"?

A. That's actually--- In that, I could not qualify myself to answer, but as it has been on the tickets, coming from the Machine Shop, they say that it's an actual deterioration of the elements of the metal itself over constant stress during the years where it will finally just, basically, disintegrate.

Q. Was there any evidence of any crystallization or any disintegration on any of the occasions that you had to examine this elevator prior to the accident?

A. No, sir. If this was the cause, through crystallization, it would have taken extensive electronic equipment to discover it before it happened.

* * *

CROSS-EXAMINATION

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BY MR. KLEIN:

* * *

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Q. What about the hoist cable? What was the condition of the hoist cable?

A. These are basically checked every inspection, which in this case with D. C. inspection, I believe is four months, and they are extremely strict on the condition of the cables.

Q. What did you find when you first came into the building, what was the condition of them?

A I don't believe, sir, when I went into the building that I even had occasion to check the cables.

Q That's not your function?

A It is now, yes, sir, but---

Q Would you notice if it showed excessive wear?

A Oh, definitely, yes, sir.

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Q Mr. Sampson, I am going to show you Plaintiff's Exhibit 13 , and starting with the condition of the passenger elevator, I would like you to read the sentence and give your opinion as to whether this is a correct statement of the condition of the elevator at the time you first saw it: Will you read the first sentence aloud?

A This was at the time of the Lease?

Q Just read the sentence, if you will.

A I'm trying to refer to which period of which year.

Q I'm talking of the time when the elevator was taken over and the building was taken over. Read the first sentence, please.

A "Equipment is in very poor state of repair throughout."

Q What's your comment?

A I don't believe it was in very poor -- it was in need of repair which is why the initial inspection, and the repairs that were made through our shop.

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Q You had no authority to correct anything?

A I had authority to correct anything on any elevator that I work on.

Q You could make major repairs on an elevator—

A Yes, sir.

Q Without getting the approval of the building man?

A Well, let me go back just a second. If I find an elevator with defective cables, yes, basically, I have got to go through my supervisor, notify him; he comes and checks the elevator, reports it to the Building Management Division and cables are ordered and replaced. But, should I find an elevator with a door hanging loose in the hoistway or something, yes, this is perfectly within my power.

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Q Mr. Sampson, you testified that you came to the building on Monday following the accident out of curiosity.

A Basically, yes.

Q By that time, the shaft had been replaced, is that correct?

A Yes, sir.

Q What was it you did see?

A The elevator had been completely repaired, and was back in service, normal operation.

Q When you say "in service," who was using the elevator?

A The building occupants.

50 Q And the elevator operator was actually using that elevator?

A Yes, sir.

Q And people were being taken up and down?

A This is correct.

Q What time would that have been?

A Shortly after noon. I would say it was in the vicinity of 12:45, one o'clock -- right after lunch.

Q If I told you that Mr. Schwieder had testified that he prevented the elevator from being used by anyone but the mechanics, would you say he was incorrect?

A I would say he was mistaken, yes, sir.

* * *

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RALPH S. SHUMAKER

DIRECT EXAMINATION

BY MR. GALBRAITH:

Q Your name is Ralph Shumaker?

A Yes, sir. ***

Q Are you retired from the District of Columbia Government employment?

A Yes, sir, 1965.

Q Up until 1965, can you tell us please how many years of service you had given to the District of Columbia Government?

A 29 years and 8 months.

Q Had you ever in your life ever seen Mr. Schwieder before that time?

A Not to my knowledge, sir.

Q While in the witness room, today; did he interrogate you concerning your previous appearance at any time, or how you looked or whether you might have had a mustache?

A I didn't know who he was. May I explain?

Q Surely.

A I didn't know who he was. He was a stranger to me. He said, "You used to wear a mustache." I said, "No, I never wore one in my life."

Q All right, sir. Mr. Shumaker, prior to going to the District of Columbia Government, did you have any connection with the elevator business?

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Q During the 11 years you were with Otis, can you tell us what the nature and extent of your work and experience was?

A Well, we all start, sir, as a mechanic's helper, and I worked until 1927, I think, and I was made what we call a "probate mechanic," that is kind of temporary, and then in 1929 I was promoted to construction superintendent and sent to Baltimore, and then in November of the same year I was transferred back to Washington, and with the exception of a short time during the Depression, I was with them up until 1936, when I went down to the District.

Q Mr. Shumaker, when you came to work for the District of Columbia Government in '36, I think you said ---

A Yes, sir.

Q ---- what department did you become affiliated with and what was your job?

A I was with the Department of Licensing and Inspection under Colonel Holman, and my particular duties was as an inspector. Of course, they give you a period of two or three months to become familiar with their routine and the way they do things.

Q Did you follow this type of work up to and including the year 1957 continuously, for the District of Columbia Government?

A Yes, sir.

Q Did there come a time when you were assigned to the which area of the City of Washington/included the Stewart Building?

A Yes, sir.

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Q I wonder if you would examine those records and tell us if there came a time in 1957 when you had occasion to inspect the elevator at the Stewart Building. Perhaps it was one of your fellow workers, so would you be sure that I am not asking you to testify about something that was not done by you, but would you refer to November 1956 please -- specifically, November 26, 1956?

A My first record, sir, is 3-11-56. Is that what you have reference to, sir?

Q Would you tell us what your records show concerning your investigation of the elevator at the Stewart Building with respect to March of 1957? Would you tell us please what type of inspection you would make, what you would do at the Stewart Building and what your findings were at that time?

A May I ask a question -- was the Government here this time? There was a time after ---

Q Yes, the Government had been there since about the first of the year.

A The first thing you do, sir, you must get keys, machine room and overhead keys from the custodian. I supposed it was a young lady.

Q Why was that necessary?

A Well, the doors were always locked. The machine room downstairs was locked with a padlock. That is the machine room, not the machine. The room, it was locked with a padlock and

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then we have in this particular job what was a basement traction elevator.

Overhead, of course, we have the sheaves that carry the weight and the car, and then that, too, is in a little room upstairs and that, too, was locked.

First thing we do is take that lock -- take the keys to start with and go in the machine room downstairs and look at contacts, switches, cables, bearings, see whether they are oiled and greased and everything.

Q What about the buffer pad?

A That, sir. -- buffer?

Q The buffer pad.

A Where the weights hit, you mean, sir?

Q Yes, sir.

A That would be in the pit, sir, not in the machine room.

Q I see.

A Then we would take the car to the top of the house and lower it in order to clean on top of the car, then we would go back upstairs and minutely look at cables, hitches, shackles, shoes, brackets, rails, and then go down all the way to the bottom.

Q What about the area in the attic where the idler sheave, where the pillow blocks were and the beams supporting the pillow blocks?

A If I may clarify you there, sir, the machine beams themselves are set on steel plates in a brick wall and they are what we call growled in -- you would probably call it bricked in. The pillow blocks, I imagine that you have reference to, are the ones that hold the bearing.

Q Yes, sir.

A Then would be set out on the machine beam -- there is no connection between the bearing plates of the machine beam and the pillow blocks. They are different.

Q What inspection, if any, would you have made of that area?

A The bearing?

Q The bearings, the shaft, the pillow blocks in 1957?

A As far as the machine beams and the bearing plates, they are stationery; they couldn't move. But the bearings themselves we watch closely. And see, if they are lubricated and if they are not, everybody in the building would know it...

A Do you want me to continue what we do?

Q Please.

A The next thing we watch is the governor which controls the safety of the elevator. A governor is set at 40 percent over the rated speed, which allows you to overspeed, and if you do overspeed, you trip because of the overspeed, to keep your car from running away; or in case of a broken cable or something like that, it won't fall very far.

370

Q Mr. Shumaker, we have on the board a diagram which one of the previous witnesses made, who has indicated that this is (indicating) an idler sheave the way it was found after an accident, October of 1961. The pillow block is here, the shaft here, and the sheave here, broke at the time of the accident.

A Yes, sir.

Q On your first inspection of this building, in March of 1957, did you go to this area and inspect these pieces of equipment or machinery that I have just made reference to?

A Many times, sir.

Q Over here, we have a side view of what one might see if they were off to the side of this pillow block and looked at them.

A Yes, sir.

Q And there has been an identification of a cap here.

A Yes, sir -- the bearing itself, sir, is split. The bearing has what we call a bearing cap. If you notice, I believe he has marked through there ---

Q Would you mind coming down to the board and showing us what you are now testifying to.

A (At diagram) Our bearing pin comes through here (indicating). This is what we call the bearing. And this is the cap right here. Whoever drew this, I don't think he shows that this, too, is bolted down. If I remember it right, that was bolted down, but that is beside the point.

The block itself -- this is the bearing. The block itself was built up like this. In other words, it is a shortened extension. You see, we have to set those things at such a speed in order to give you clearance and you run by the car when you are coming up stairs. If you get too close, you have to move it.

I don't know if that was the case here, because this was an obsolete job when I first come into the pit. But that bearing goes through there, like through here (indicating).

Q. Would your inspection involve an examination of that area?

A. Oh, yes, sir.

* * *

THE WITNESS: There were two of these up there. He doesn't show but one.

BY MR. GALIWER:

Q. This is just to show how one would ---

A. I understand. Where one broke was right here (indicating).

Q. Yes, sir. On the occasion of your first inspection did you find these parts of the elevator working satisfactorily?

A. Yes, sir.

372
Q. Did you find any evidence of any wearing in the bearing or the shaft?

A. No, sir.

Q. Did you find ---

A Correction please. There might have been a minute wearing in the bearing itself, but if so, so small, hardly noticeable. We wrote 5/1,000ths of an inch, failure to find out how much wear you have on your bearing.

Q Will you state whether the parts were well lubricated?

A Always, always well lubricated.

BY MR. GALINER:

Q Will you state whether or not on that occasion you examined the buffer plate that the weights came in contact with?

A May I ask a question?

Q Yes.

A This buffer plate -- we had a spring; it was a spring and not a plate, sir.

Q I see. All right, sir, let us know whether or not that was in satisfactory condition.

A Indeed -- yes, sir.

373 Q Would you tell us please when you next inspected or went to the Stewart Building, as reflected by your records, after that occasion?

A I don't think, sir, that I found other-than-minute things -- could I back up a minute here, because I always had to have Mr. Gerrity's men with me and if you find some minute thing that needs attention, you tell them and you don't put that in the record such as a contact that's burnt or one that's arcing,

or something like that. You just tell him to change this and you make no record of that, because that is not a major repair.

Q Yes, sir. Would he *** be the one who would generally come to the elevator when you would go there to make your inspection?

A No, sir, Mr. Corrity was more or less, I think, in a supervisory capacity, and I would contact him on the phone and he in turn would send a Master man or a mechanic, sir.

Q All right. What was the date of your next inspection in the year 1957, if there was another date?

A 7-8-57 here, sir.

374

Q What did you order at that time, if anything?

A Not anything, sir, but there was on a little electric elevator -- you know, one of these elevators that come up through the sidewalk.

Q That was the outside elevator --

A Yes, sir.

Q That had nothing to do with the inside elevator.

A Well, the next sheet I have is 11-5-57.

Q That is before the Government was there?

A Yes. On 11-5-57 we consolidated the two files into one and there was nothing ordered here that ---

Q What type of inspection did you make at that time?

A The same inspection every four months, sir.

Q Did you also go up to this area?

A Yes, sir.

Q How long would your inspection generally take on these occasions?

A Well, that is hard to say for this reason: I couldn't make the inspection without Mr. Gerrity's men, and there was sometimes they were tied up and I would have to wait. Of course, 75 I can't charge that time to making the inspection, because I was there; but had they been there, it could have been made in an hour or hour and a half or two hours.

Q Yes, sir. We are talking about 1957. Did you, on any occasion in 1957, ever notice the car idler sheave to be on an angle?

A No, sir.

Q Will you state whether you ever found any evidence of wear in the bearing that year, in the pillow block?

A Other than a normal wear of a bearing, you wouldn't notice anything.

Q Will you state whether you noticed any evidence of any wear in the shaft that came from the idler shaft by the pillow block on either side?

A No, sir, there was no wear there, or if so, so minute you couldn't tell it with your eye.

Q Mr. Shumaker, if you had found any evidence of deterioration or any evidence of a disrepair in any of these parts, the shaft, the bearing, the pillow block, what would you have done?

A I would have ordered it corrected right away.

Q When was your next inspection?

A 3-13-58, according to this here.

Q What type of inspection did you perform at that time?

376 A Exactly the same.

Q What were the results of your inspection?

A I found nothing.

Q Did you find any evidence of any deterioration or wear in the bearing or in the shaft?

A Not -- no, sir.

Q Or in the pillow block?

A No, sir.

Q I neglected to ask you this. In '57 or '58 did you notice any evidence of the beams supporting the pillow block on this side where it was imbedded in the bricks and mortar? Any evidence of any pulling away or any dropping of any mortar, any looseness of the bricks?

A No, sir, I did not, but had there been some mortar or dust or things like that, Mr. Cerrity's men were very thorough. They kept it clean and they were there once every week. I come once every four months, but as far as I personally am concerned, I never saw even any mortar.

Q Would you have noticed it if it had been there?

A Yes, sir, it would have been on top of the car.

Q When was your next inspection?

A 7-18-58.

Q What type of inspection did you make at that time?

A Exactly the same.

Q Will you tell us please if you found anything of any sort that was unsatisfactory?

A No, sir.

Q Was there any tilting of the car idler at that time or any evidence of wear in the bearing in the pillow block or the shaft on either side?

A No, sir.

Q Was there any evidence of mortar dropping out from the bricks or any pulling away from the beam where it went into the bricks on this side?

A No, sir.

Q What was your next examination after that time?

A 11-5-53.

Q What type of investigation and examination was performed at that time?

A Exactly the same.

Q Again without repeating everything, you inspection all of these parts?

A Yes, sir.

Q And the brick where it was moored to the beam -- where the beam was moored, was there any evidence of any lack of repair or disrepair or any wearing away of the shaft of the bearing?

A No, sir, but, sir, could I say something here?

Q Surely.

A If all the brick and mortar had come out of there, the beam still would not have come out because it is imbedded as deep as 6 inches on a steel plate, and all the bricks could have been taken out there purposely, and it still wouldn't have come out because you couldn't move that beam with about seven tons hanging on it.

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Q When was your next examination at that time, Mr. Shumaker?

A 3-10-59.

Q Was the same examination made? That is, as you have indicated?

A Yes, sir.

Q And again, did you find anything unsatisfactory with respect to the bearing, the shaft, the pillow block or where the beam was attached to the wall?

A No, sir.

Q Or was the idler shaft out of line?

A No, sir.

Q And on these occasions you went through the same detailed examination ---

A Yes, sir.

Q --- which took an hour and a half to two hours?

A Yes, sir.

Q When was your next examination?

A 7-15-59.

Q What was the result of that examination?

A Exactly the same, nothing.

Q Would you tell again if, without going into these
various details, if everything ---

A Yes, sir.

Q --- was found to be satisfactory?

A Yes, sir.

Q What about the springs to which the buffer was attached?

A Sir, the buffer sits in between two counterweight rails and it's stationary, if I understand you. It is stationary. It doesn't move and it is only a cushion to the counterweights when the car goes by the top floor, to keep from jarring the car or the passengers. This spring will cushion the weights and it is hardly noticeable even though you run by the top floor.

Q Did you find that in satisfactory condition?

A Indeed, sir.

Q When was your next inspection?

A 11-25-59.

Q Was the same type of examination made at that time?

A Yes, sir.

Q Did you also examine the same area?

A Yes, sir.

Q Did you find any evidence of any disrepair of any of these parts that are reflected from testimony on this blackboard?

A No, sir.

Q Were the springs with respect to the buffer working satisfactorily?

A It was in place, sir, in case it was needed.

Q On the occasion of any of these inspections that you would make, would this also include stopping the elevator at different floors, examining the door of the elevator at each floor?

A Yes, sir.

Q And do you recall finding anything out of order with respect to those?

A Other than minor adjustments that were made on the spot, no, sir.

Q You would sometimes find something and ask Mr. Gerrity or one of his men to make the adjustment?

A Oh, yes.

Q That would be done before you would leave the building.

A Yes, sir.

Q When was your next inspection?

A 3-21-60.

Q Will you tell us, sir, if you made the same detailed type of examination and inspection of this entire elevator as you had on your previous occasions?

A Yes, sir.

Q What were the results of your inspection at that time?

A A clear bill. I did not find anything.

Q Was there an occasion in July of 1960 when you or perhaps some other gentleman from your department ordered a test of the governor?

A I did that, sir.

Q All right. When was that?

A That was 7-13-60. That would be July, yes, sir.

Q What were the results of that test?

A May I explain that I ordered the test -- we had then a crew that made the test. I would order it, but I would not make it. But I will read it -- what his report here was.

Q All right, sir.

A The test was made by Mr. J. M. Laut, 8-1-60, one basement traction, 155 feet, speed-tested at 2:05. Governor tested at 2:05. Amount of pull-out, 5 feet 8 inches. Number of turns left on drum, five and a half.

Do you understand that?

Q No, sir.

A Well, sir, the way a safety is set up, under the elevator we had this drum that has a cable on it and it goes around and up to a carrier on the top of the elevator which, in turn, is tied in and goes in over the governor and down around the tail sheave and up. In other words, this governor rope runs independent of the elevator itself.

Now, when we trip that elevator upstairs, we trip the safety. It stops the governor cable, but the elevator itself

keeps on going. That, in turn, pulls the cable off the drum under the car, causing the car shoes to go out. They fit over the rail -- wedge clamp is the trade name of it. The amount of pull-out is what he means here, what he pulled out before he
382 came to a complete stop, and this five and a half turns is what was left on the drum afterwards.

Sometimes if we have less than three turns, we order a new rope on there, because that is not long enough. That is a safety factor.

* * *

MR. GALINER: Tell Mr. Gagni from the United States Government and also Mr. LaVwe the Court is adjourning and I will call both of them after I finish up today.

Thank you very much.

BY MR. GALINER:

Q You told us that the inspection which you have just detailed was found satisfactory?

A The governor test we are making, the safety test, you mean?

Q Yes, sir.

A Yes, sir, it is O.K. here. It is stamped O.K.

Q When was your next examination and inspection after that time?

A 11-17-60.

383 Q Will you tell us please if you made the same detailed examination ---

A Yes, sir.

Q --- that you have outlined as you did on the previous occasions?

A Yes, sir.

Q Will you tell us whether there was any evidence of wear in the bearing, in the shaft, or the pillow block?

A Other than a little wear on the bearing, the shaft, was so small. If there was any wearing at all, it was so small you couldn't tell it with your eye.

Q You found there were no repairs necessary to be done at that time?

A Yes, sir, that is true.

Q Did you find any evidence of any mortar or bricks loosening at that time?

A No, sir.

Q Was the car idler sheave straight line or on an angle on that occasion or in a straight ---

A Straight.

Q When was your next inspection?

A 3-21-61.

Q Will you tell us, if you made the same detailed sort of an investigation and inspection that you had made on previous occasions?

A Yes, sir, the same.

Q Again as of that occasion, will you tell us whether you found any lack of repair, any disrepair, or any needed repair so far as the shaft, the pillow blocks, the bearing, the idler sheave, or the wall to which the beam was attached?

A I did not, but I would like to say here, if I may, that I have never asked Mr. Gerrity or his men to make any repair that wasn't made promptly and efficiently.

Q Thank you. When was your next inspection and investigation?

A Here, sir, the building itself called for an "expectation on our passenger elevator." Whether or not Mr. Gerrity asked for this or whether he had done some repair work and wanted us to look at it or not, I am not sure, but you will notice it is marked "special inspection." I was not down there then, but whenever anyone in the District calls you, we go.

Q What type of investigation would you have made on that occasion?

A Just a routine inspection.

Q Same type of inspection?

A Same, yes, sir.

Q Would that have included the same area?

A Yes, sir.

Q As is reflected on the board?

A Yes, sir.

85 Q Will you state whether you found any lack of repair or any needed repair to the bearing, to the shaft, to the pillow block, to the idler sheave?

A. No, sir, I found none.

Q Will you tell us whether or not you found any mortar in this area of the pillow block or any evidence of any mortar and bricks around the beam, indicating that there was a loosening?

A. No, sir.

Q When was your next inspection?

A. 7-13-61. Now, this is the first -- may I continue?

Q. Sure.

A. This is the first time over the months that I was asked for anything, and that is as long as the District -- now, this was this young lady that was the elevator operator. I don't know whether she had a District permit or Civil Service permit. If she had a Civil Service permit, of course she didn't have to answer our questions, which is as it should be. But if she had our permit, she was supposed to report to the District anything -- but here, what I have here, I just asked them to put the inspection certificates back in the car.

Whether they had them or whether they were over at the GAO or whether Mr. Althoff had them, I don't know. But I asked them to be put -- that is the only thing I have written up over the months there.

Q. Was that done thereafter?

386

A It was, yes.

Q What does your record show as to when that was installed in the car?

A 7-26-61..

Q Did you, in July, make the same detailed inspection that you had previously made on the other dates that you have identified?

A Yes, sir.

Q Did you go to this area?

A Yes, sir.

Q Did you inspect the pillow block, the bearing within the shaft and the beam attached to the wall?

A Yes, sir.

Q Was there any evidence of any disrepair or lack of repair or needed repair there at that time?

A No, sir, not that I could see.

Q Would you have been able to note it from that inspection?

A I hope so, sir, after the years I have, seeing -- I think I would know, yes.

Q Did you notice any mortar in the vicinity of this pillow block or any loosening of the bricks?

A I am just a little confused, sir. The mortar would never have been on the pillow block, sir.

Q I am sorry. Did you notice any mortar along the wall there?

387

A No, sir.

Q I take it you have never seen it there, is that correct?

A I never did, no, sir.

Q Now then, did you thereafter go back to this building prior to the happening of an accident? Or when was your next visit?

A 10-25-61.

Q Would you tell us please what occasioned your visit at that time and what you found?

A This was when we were called back. This has to do with an accident.

89 Q Would you tell us what your investigation disclosed at that time?

A "On further investigation, I found that a new pin or shaft had been installed in both the car and counterweight sheaves, all bearings had been re-babbitted and new hoist cables had been installed. This elevator was inspected on July 13, 1961 and found to be in full compliance with the D. C. Elevator Code, was inspected again on October 23rd and was in compliance with the Elevator Code."

90 Q Mr. Shumaker, did you measure the shaft which had been installed in the pillow block?

A Yes, indeed; I did. I have it here in the record.

Q What was the size of the shaft that had been put back in the pillow block?

A An inch and three-quarters. I don't see it here, but I remember. I have it here somewhere, sir.

391

Q Did I understand you to say that you found the elevator at that time in full compliance and ordered it back in service?

392

A It was in service when I got there, sir.

Q On the basis of your background, your training, your inspections of this elevator over a period of years and on the basis of being told that that shaft was found to have broken at the time of the accident, did you reach an opinion as to what might have caused that shaft to break?

A Yes, sir.

Q What is your opinion, Mr. Shumaker?

A May I explain just one little ---

Q Yes, sir.

A I have run into this before. That is crystallization, and it puzzled me. It scared me, to be perfectly honest, that these things could happen. So, I go to the Bureau of Standards and talk to Mr. John Dickerson, who is a safety engineer ---

Q We can't go into your background in reaching the opinion. You can give us your opinion and your reasons for the opinion.

A Well, what I was trying to get around to, sir, is how anyone, whether he is the best mechanical engineer in the world or not, how anyone can tell when a crystallization will set up. You can't tell when that is going to happen any more than tell when you will have a heart attack, sir. It is one of those things that happens. It has happened to me before. It has puzzled me and, as I told you, it scared me.

Q What is your opinion as to what happened here?

A That is a crystallization right there.

Q What is "crystallization"?

A I wish I knew, sir. It could be a fault in the piece of steel. It could be an air bubble that was left in there when it was poured. It could hardly be a fault in the milling because it has to be cut down very smooth.

Q Would there have been any way that you or anyone else could have detected that prior to the happening of this accident?

A Sir, if I had been there one hour before that happened, I could not have condemned it. If I had, they would have called in a mechanical engineer to find out why.

RALPH S. SCHUMAKER - CROSS
Q Mr. Galher asked you *** whether you had noticed that.

the counterweight and the buffer and springs were being struck, and I believe you testified yes, there was evidence of that, isn't that correct?

A Sir, in cabeling, what we try to do -- and of course, over a period of time, you have an enormous stretch in those

cables. In other words, if you cable them too short in order to allow for the stretch, then you run into the overhead before you land; so what we try to do is have the weights land about six inches before it strikes the overhead.

Q So, the fact that it was striking the buffer pad---

412

A It had to be that way, sir.

Q (Continuing) ---indicated it was too long?

A No, not too long. It had to be that way or else we would run into the overhead.

Q Wasn't there a danger when the counterweight struck that the cables might be knocked off the sheave here, that if it struck hard, that it would cause the cables to come off?

A What you have reference to there, what he has drawn is what we term a car sling -- that is, the car itself and the operator, and if you mean, would they bounce or overhaul? No, sir, not with the weights landing.

Q Wouldn't that cause the cables to go up and the play up there possibly cause it to come off the sheave grooves?

A It's highly unlikely.

415

Q In this last one, they are talking about this elevator being fully loaded. Would this elevator itself give good service if being fully loaded for that building?

A The only way I can answer your question is, it apparently did, because I got no complaints from anyone except

occasionally the operator herself who said, complained about minor defects or minor repairs needed on doors; and then here again, we come into this burnt contact business, because they continually do that because it is 220 volts of electricity, and working like this, they create an arc and burn, and they are out of round, shall we say, or flat.

Q Why did she complain to you about the arcing and burning in the contact points? Why would she complain to you?

A You misunderstand me, sir. I did not intend to imply that she complained about contacts because she was in no position to know.

Q Mr. Shumaker, you testified that when you inspected the elevator, it was properly lubricated, is that correct?

A Yes, sir.

Q When you saw this elevator in March of 1957, did you find anything wrong with the machine and controller or that it was poorly maintained at that time?

A I don't think so, sir.

Q - At the time you saw this elevator in March of 1957 was the hoist-way equipment dirty?

A Not when I found it, no, sir.

Q When you inspected the elevator in March of '57, did you examine the hoist cables?

A Always.

Q Will you tell us whether or not they were satisfactory at that time?

A To me, they were or I would have ordered them out.

446 Q Will you state whether or not at that time you noticed any excessive wear or numerous breaks?

A Well, the Bureau of Standards allows us about 10 to 12 breaks to the foot before condemning, but I did not find that many. You understand the make-up of a cable, sir?

Q No, sir.

A Well, these cables were 5/8 of an inch in diameter and, in what we call in the trade, 8-19. It would be 5/8 --- 8/19. What that is, it's 5/8 of an inch in diameter, with 8 strands with 19 wires to each strand, and they are manufactured just like a rope.

Q Yes, sir. On that occasion or any other occasion during the 20 times that you inspected this elevator, will you state whether or not you ever found the cables in need of replacement?

A I don't remember it, sir, because the only cables that were changed there was after this accident, and then because they were, shall we say "chewed up" because of the accident, and Mr. Gerrity remade them or replaced them then.

Q What would you have done if, upon investigation of the hoist cables, you had determined they showed signs of excessive wear and breaks?

A I would condemn them on the record.

* * *

LEONARD LE VWE.

* * *

DIRECT EXAMINATION

BY MR. GALIHER:

* * *

Q Your name is Leonard Le Vwe? It's spelled Le V-w-e?

A That's correct.

* * *

Q By whom are you employed at the present time?

A General Elevator Company, of Baltimore.

Q1 How long have you worked for the General Elevator Company of Baltimore?

A A little over 20 years.

Q What's your present capacity with the General Elevator Company?

A Branch Manager of the Washington office.

Q Would you tell us please what your experience has been in the elevator business, from the beginning up to the present time? Give us your background and experience, if you will please.

A I worked in the manufacturing end of the business, both in actual fabrication and in the production of the equipment. 58 I have spent time in the engineering department, in various sales offices; I have worked as a mechanic; I have been the service, maintenance and repair superintendent up until the prior time of being branch manager of the Washington office.

Q And when you say you have worked in the manufacture and fabrication, what do you mean by that, sir?

A Actually building the equipment, fabricating the necessary structural parts and machine parts of the elevator equipment; and in engineering, actually designing the equipment for it to be fabricated.

Q What about the repair end of the business?

A I was, for two years, and a year prior to that, Acting Superintendent; and for two years was actually superintendent of the repair and maintenance end of the business where we maintain the elevators in their proper operating condition, take care of any emergencies or repairs that are required.

Q Mr. LeVwe, we're dealing here with a Marsh basement-type, traction elevator. Are you familiar with that type of 459 elevator?

A Yes, I am. I have worked on, not this particular one, but elevators of a very similar design by Marsh.

Q Now, we are talking about an accident that happened, Mr. LeVwe, in the overhead of an elevator at 6th and D Streets, Northwest, and there is testimony which has shown that commencing in March 11, 1957, and extending up to the time of the last inspection by the District, which was in July of 1961, before an accident which occurred in October of 1961, that

each time the inspector from the District of Columbia inspected this elevator he would make an inspection lasting for an hour-and-a-half. He would inspect this elevator from the pit and machine room on up. He would ride the elevator; he would check each floor. He would go into the overhead where the idler sheave, where the pillow blocks were located, where the shafts were located, where the bearings were located, and where there were beams coming out on this side from a brick wall supporting the pillow block.

The testimony has shown that on each of those occasions, other than some wear, there was no excessive wear ever detected, no change in size of any of these shafts, nothing found to be wrong with the bearing. The pillow blocks which house the bearing were found to be well lubricated.

There is further testimony on the part of a Government Service employee, a gentleman who was the supervisor for that area, who regularly inspected this elevator and the parts of the elevator that I have just referred to, which were inspected by the District of Columbia inspector. There is further testimony by the inspector from the General Services Administration that he came to the scene after an accident had occurred on October 20, 1961, and he found that this shaft (indicating diagram) had broken. He found that the shaft was of normal size. He found no evidence of change in the size of the shaft. He found the bearing to be in the

pillow block; he found it to be well lubricated; and he found that there had been a failure of the shaft between the car 461 idler and where it goes into the pillow block.

This elevator, the testimony has further shown, was in operating condition, according to the D. C. inspector, on all occasions when he inspected the elevator commencing with March of 1957 and including the time of his last inspection in July of 1961.

Now, based on those facts, Mr. LeVwe, do you have an opinion as to what caused the failure of the shaft on the occasion of this accident in October of 1961?

* * *

Q Now, may I ask you if you have an opinion, first of all?

A Yes, I do.

Q Will you tell us, please, what your opinion is as to the cause of the failure of the shaft?

A Based on what you said here, and what I have seen in other similar incidents, I would say that the shaft broke 462 due to a crystallization of the molecular structure of the steel -- actually metal fatigue. In the normal piece of steel, the molecules or makeup of the shaft are intertwined much like your fingers are, and this is what gives you the strength of the shaft. For unknown reasons and reasons that can't be detected, steel will occasionally separate, and instead of being an intertwined molecular structure,

the molecules will go into a crystal-like pattern, thus losing their intertwining strength; and when that happens and completes through the cross-section of the shaft, it will snap. That's just from metal fatigue. It's something you can't predict when it will happen. You can't see it happening. You can take two shafts cut out of the same piece of bar stock, and one shaft will never have a problem like that, and the other one very possibly could develop crystallization and break.

It could happen in any size shaft. I have seen instances where a shaft 5 inches in diameter has crystalized and broken. It's a very rare occurrence, but it does happen.

Q Will you state whether or not there is any way upon examination one can detect the likelihood or possibility of that occurring in a shaft such as this?

A Absolutely none. It won't even show up in an x-ray, so no amount of visual inspection could possibly produce it.

Q Is there any significance to the age of the shaft 63 in the elevator?

A No, sir.

Q Why not?

A I have seen it happen on a shaft that was less than two months old.

Q Will you state whether or not it is the custom and practice to replace shafts such as this where there is

no evidence of wear or deterioration?

A No, sir, it is not.

* * *

464 Q Mr. LeVwe, if this shaft had worn down to a point of one and one-eighth inches, or if the shaft had worn to a point seven-eighths inch, would there be any manifestation?

A Yes, quite a bit. The sheave would have tilted, and in all likelihood, before the shaft would have----

Q Excuse me. By the "sheave tilting," you mean this? (indicating)

A Yes, the pulley would have tilted. Normally, that pulley sits perfectly in a vertical plane, and if the shaft had worn to the size that you said, it would have tilted greatly to one side; and with this type of elevator, being a car-switch elevator, it has no automatic levelling; it depends strictly on the operator's ability to hit the floor, and most of them jockey back and forth quite a bit. And with this type of bouncing of the car, and if the shaft had worn to that point, with the sheave tilting, it would have bounced the cables off the sheave long before the shaft broke.

Q Would you state whether there would have been any manifestation, so far as perceptible and noticeable noise, is concerned, if there had been a wearing away of the shaft or a wearing away of the bearing in the pillow block?

A For either the bearing or the shaft to have worn to the extent that you state, there definitely would have

been a noticeable noise. You would have had one of two noises:
465 You would have had a very high-pitched squeal or shreak almost, or you would have had a low, grumbling, grinding sound. And most elevator shafts act as a sounding board or sound tunnel, and these noises are quite evident in the shaft, and it has been my experience that elevator operators, particularly those who have been on a particular car for several months or more, would be very aware of any change in noise or any ominous sound as this would create, and would have been quite certain to have called it to someone's attention. And quite frankly, it would have been heard throughout the upper floors of the building. So I am sure there would have been a number of complaints had you had a condition such as that.

LEONARD LE VWE - CROSS
BY MR. KLEIN:

* * *

Q Suppose this witness who had come for this purpose, to examine the equipment at the time of the accident, to determine what caused it, in addition to finding this wear in the shaft -- top and bottom is illustrated here -- and the break at that very point; and it wasn't broken at any other point, it was broken at the point where the shaft had worn; and further found that the bearing had worn through and that the shaft was now resting on the pillow block, would that change your opinion as to whether crystallization had caused this?

472 A Not necessarily, because if the Babbit material, or the bearing material did wear out, and the shaft came to rest on the cast-iron of the pillow block, I can't see where it would cause any excessive amount of wear because prior to somewhere in the middle 1920's the standard bearing metal in the elevator industry was cast-iron. You had a steel shaft and a cast-iron bearing, and this went on for a great number of years, from about 1920 on back to when elevators first came into great use.

So, I can't see where you would have any excessive wear in that shaft because of bearing on the cast-iron for a couple of reasons: Number one, this was an accepted bearing material at one time; Number two: the shaft is rotated, the bearing is standing still. You get the entire surface of the shaft in contact with the bearing. You're only resting on one point on the bearing, so when you're constantly wearing like that, it's the piece that's standing still that would wear because it is only being touched in one spot, where the shaft rotating in the entire surface is taking the load. So the likelihood or tendency would be for the bearing to wear, not the shaft.

Q Suppose that his examination of the shaft revealed that the shaft had worn as he diagrammed it there? Suppose that was his testimony, and he further testified that 473 the bearing had worn on the bottom, the only bearing there,

would that influence your decision as to what caused this accident?

A No, I don't think so because if this situation existed as he described it, that would have caused a tilt in the sheave or the pulley sufficiently to have caused the cables to have bounced off long before the shaft broke, and would have caused a similar shut-down of the elevator equipment.

Q Suppose we leave out that other, but assuming just that situation, that the testimony showed the wearing of the shaft as illustrated there, and the testimony also showed that the break in the shaft was at that point of wear (indicating), and the testimony also showed that the bearing had been worn through. Now, on that testimony would you still say that it was crystallization that caused it to break?

A Yes, I would.

* * *

480

JEROME S. MURRAY,

* * *

DIRECT EXAMINATION

BY MR. GALINER:

Q Will you give the Court and Jury your full name?

A Jerome S. Murray.

Q Did there come a time, Mr. Murray, when you entered into a Lease with the U.S. Government for this property?

A Yes.

* * *

486 Q Mr. Murray, what was the condition of the elevator so far as you knew at that time?

A It was in good condition.

Q Was it approved? Did it have an approved sticker on it?

A Yes, it did.

* * *

487 Q Mr. Murray, there has been introduced into evidence Plaintiff's Exhibit No. 11, a report on the condition of the building, the Stewart Building, dated inspected January 7, 1957. Will you please examine that? This shows on its face that you received this on June 11, 1957 from Mr. Rankin. Is that the date when you received it?

A Yes. I probably received it several days later, but the letter from him was June 11, 1957.

* * *

489 MR. GALIHER: Your Honor, I don't believe this has previously been before the jury. May I, therefore, read it to the jury, if you please?

THE COURT: Yes.

MR. GALIHER: Ladies and gentlemen of the Jury:
This is from George A. Smith, Manager, North Area, Region III.
It's dated February 27, 1957:

"Dear Mr. Murray:

An inspection of the premises at 400 Sixth Street, Northwest, has been made by our Safety and Fire Protection Office. The following items which require corrective action are understood by the terms of the Lease to be the responsibility of the owner:

- (1) Exposed joists in the ceiling of the boiler room should be covered with a suitable fire resistive material;
- (2) All elevator doors should be put in proper operating condition and those with open grill work should be protected with metal covering; (3) the exposed wood laths in the elevator shafts should be covered with a fire-resistive material; (4) the opening at the top of the elevator shaft should be covered with a fire-resistive material; (5) the fire escape on the southwest side of the building has a bracket in need of repair and bricks in the wall to which the bracket is anchored are loose; also a safety chain should be provided at the opening of the

490. "rail on the second-floor landing; (6) fire escape landing on the second floor, southeast side of the building should be provided with opening and safety chain; (7) Chimney leaks badly; should be checked to be sure it is safe and sound; (8) west wall of the low part of the building appears to be unsafe, since it has assumed a position that is noticeably out of vertical.

"Your cooperation in correcting these deficiencies will be appreciated."

BY MR. GALINER:

Q Forgetting a moment the situation of the deficiency of the chimney, did you comply with these other deficiencies they called attention to?

A Yes, I did.

491

"Mr. George A. Smith,
Manager, North Area,

Region III,
General Services Administration,
Washington, D. C.

Dear Mr. Smith:

"It is my understanding that GSA will take care of Item Number 2, relating to the elevator repairs in your letter of February 27, 1957, in lieu of reimbursing Mr. Murray for his expense of boiler operations and coal purchased for the Stewart Building, after the Bureau of Ships has taken possession.

Thank you for your consideration in the matter.

William T. Althoff."

Q Can you tell us what, if any, understanding you had with the Federal Government concerning boiler operations and coal which had been purchased?

A The Federal Government moved in the premises on January 1st, but being it was wintertime, we kept a maintenance man on the premises to fire the boilers and keep heat in the building so none of the radiators or any of the equipment would freeze, and they were not able to get their custodian service to take over the operation of the building for about two weeks; and in lieu of paying us for our maintenance, maintenance man and custodian man and the cost of the fuel, they arranged to take care of the item on the elevator in lieu of that.

Q This letter also made reference to a putting in of a fire-resistive material. Do you have any recollection about that one way or the other?

A I don't remember whether we put it in or they did. But we did work at the premises at the time and had a maintenance man there. Whether we put it in or whether the Federal Government put it in, I cannot remember.

Q When did your maintenance man leave?

A Well, we had put the radiators in, did a lot of, you know, work that they had asked us to do that we had agreed to

do. I really don't know. He was there the first part of January and February to do the work.

493 Q Will you state whether or not you had anyone there after the month of February who had anything whatsoever to do with the interior of the Stewart Building?

A Well, I can't went to my knowledge. To night have been up to March where we had maintenance men who would go in to do the items which they wanted, but after the first part of 1957, January or February or March of 1957, I would feel safe in saying we had no further work done on the interior of the Stewart Building that's under the Lease.

MR. KLEIN: Your Honor, this is a leading question.

THE COURT: That's not a leading question. I will overrule the objection.

THE WITNESS: No.

BY MR. CALHOUN:

Q Did you do anything to the elevators, so far as 494 you can recall between 1957 and the happening of this accident in October?

A No, we did not.

Q Will you state whether or not you ever sent anyone to the elevator between 1957 and 1961?

A No, sir, I would say we did not.

JEROME S. MURRAY - CROSS
BY MR. KLEIN:

Q Mr. Murray, what was your understanding as to what the appurtenances -- what the word "appurtenances," "the building and "appurtenances thereto belonging," what was meant by that?

A It's a legal term -- everything that's in the building.

* * *

Q What was your understanding that you were furnishing the government under the terms of the Lease?

A My understanding was I was furnishing them the building that was there and all the equipment that was there for them.

Q Operating, is that right?

A Operating at the time they took it over, yes; as of January 1, 1957.

Q Was that your understanding that this would be a continuing obligation during the terms of the Lease?

A No, it was not my understanding. It was only my understanding to turn over the building, as the letter said, in operating condition as of the time they took it over.

* * *

Q You agreed that you would furnish "the building and all appurtenances thereto belonging, including all operating and service facilities and equipment existing at the time of

occupancy or agreed upon by the Government and the Lessor," the first paragraph, is that correct?

A That's correct, yes.

Q You further agreed that "the Lessor shall make all necessary repairs to the exterior walls, roof and structure of the building, including exterior painting, required for the preservation thereof, not caused by the negligence of the Government's agents or employees, and in addition, shall keep the building in a weather-tight condition and shall replace in whole or in part any facilities and/or mechanical installations, which through deterioration or faulty construction make it impossible to provide the services available or agreed upon at the time of the Government's occupancy of the leased premises."

What is your interpretation of the language used here?

A I don't understand, "What is my interpretation"?

Q What was the intent, as you recall. You are a party to this contract. What was your intent in using this language, that you "shall replace in whole or in part any facilities and/or mechanical installations which, through deterioration or faulty construction make it impossible to provide the services available or agreed upon at the time of the Government's occupancy of the leased premises"?

A Well, if they had called upon me to replace any of the facilities that were not operating, then I would have had to repair them or replace them. ***

2 Q Now, passing to the next paragraph, "The Lessor agrees
3 "to comply with all local ordinances, regulations and statutes
relating to buildings and their equipment..." What is your
understanding of your obligation under that paragraph of
the contract?

A Just what it says. I can't go beyond that.

Q Would that include the elevator regulations?

A I don't think it would because they agreed to take
over the elevator and do all the work on it, but in reference
to -- regulations, like taking out permits or paying for the
other permits, I don't know. I have no definite point as to what
this regulation and statute would mean other than if it in-
cluded the elevator, we have to take out an occupancy Certificate
of Elevator, and we paid for that. Whatever items that we would
have to pay for, we would do it. We would comply with the reg-
ulations.

Q Going to the next paragraph, "The Government shall,
at its expense, furnish all necessary labor and material for
the maintenance and custodial services of the building..."
What was your understanding of the maintenance and custodial
services of the building?

A My understanding and our discussions with the
Leasing Division is that when we turned the building over to
the Government that they would take care of everything, that
they would not call on us for anything unless some major thing

broke down, that we would not take care of anything in the building. It was a security building, and they did not want anybody to come into the building, and we were not to take care of any of the building at all.

506 Q Were you responsible to furnish processing operations of equipment and that sort---?

A No, sir.

Q Cleaning?

A No, sir.

Q Or oiling of any of the equipment?

A No, sir.

Q Further on this maintenance and custodial services, the Government agreed to include interior painting, is that correct?

A Yes, sir.

Q You were responsible for exterior painting.

A Exterior painting , yes, sir.

Q Maintenance of mechanical equipment?

A Yes, sir.

Q Alterations or additions to plumbing?

A Was I required or the Government required?

Q This is what the Government?

507 A Yes, required to take the maintenance of mechanical equipment, which included elevators.

Q Didn't you say that under the previous paragraph,

you had the obligation---

A I only had the obligation of the elevators till they took over. From then on in, they had the maintenance and elevator equipment, not only for major breakdowns that happened.

Q If major repairs they were required, but maintenance they were required---

A If they called us for a major repair, we were required to---

Q And the rest, "alterations or additions to plumbing"

A Let me get to where you are.

Q This was an obligation of theirs; "alterations or additions to plumbing, heating and electrical facilities, partition work, floor covering, and any other physical improvements required for the specific needs of the Government?"

A Any other physical improvements.

Q That is, if they wanted to put in partitions of any sort, they could do that, is that correct?

A Yes, they could do that.

Q After the first year. How long did the Government stay in that building?

A Until December 15, 1962.

519

WILLIAM ALTHOFF,

* * *

DIRECT EXAMINATION

BY MR. GALIHER:

Q Your name is William Althoff, A-l-t-h-o-f-f?

A That's correct.

* * *

520

Q What was your occupation in 1951?

A General real estate management.

Q --for your father-in-law, Mr. Murray?

A Principally, yes.

A Did there come a time in December when this telegram was received by Mr. Murray, Defendant's Exhibit No. 21, concerning the rental of the Stewart Building?

A Yes, sir. (Reading)

Q Do you recall after that telegram was received Mr. Murray sending this letter to Mr. Rankin? It's Plaintiff's Exhibit No. 12. Would you kindly look at this, if you please?

* * *

521 Q Will you tell us, please, Mr. Althoff, the circumstances concerning the elevator work referred to in the letter of February 27th, and then the reference to Number Two, dealing with the elevator which is contained in your letter of April 1 to Mr. Rankin, of General Services?

A After the Lease was negotiated, there were certain items that the Government requested Mr. Murray to accomplish.

This letter of February 27th enumerates the eight points that we were to take care of. We did take care of these with the exception of the work having to do with the elevator. That was negotiated by the fact that we had assumed certain obligations of the Federal Government in regard to payroll expenses for an engineer for boiler room, certain utilities costs, cost of fuel, and these items came to some sum of money -- I forget exactly how much.

The Government explained it, that in order to get 522 reimbursed, it would be a little difficult -- the claim to be filed would be a little difficult, the red tape involved. In lieu of direct payment, they took care of the elevator work that we had agreed to take care of, in this February 27th letter. This was the beginning of their occupancy and there were certain things they asked we do.

Q There was reference in the letter to "fire resistive material in connection with the elevator."

A My recollection is the Government did that. They did all the elevator work, yes. I think we did some plaster, but no mechanical.

Q Thereafter, in June, Mr. Althoff, do you recall seeing a letter dated June 11th addressed to Mr. Murray signed by Mr. Rankin dealing with the condition of the building as well as the elevator as of January 7, 1957?

A Yes, I have seen this. It was sometime after June of '57.

Q But you didn't see it?

A Yes.

Q And there is a notation on it that you, in 1958, returned it, or the original -- that's a photostatic copy -- to Mr. Neidigh.

A Apparently, that's correct. There is a notation I saw it either February or August of '58.

523: Q Mr. Althoff, in accordance with that Lease, did you, on occasions, go to the building?

A Yes, under the terms of the Lease, we were charged with the care of the exterior of the building, and if I got a call--- I was the man who would be called by the Federal Government if there was a roof leak -- what we call a roof leak -- a window problem, and exterior painting. They would call and I would go down and look at what they had asked we do, get bids on it and have the work accomplished.

Q Would you state whether you accomplished that work?

A Yes.

Q When you noted it or when it was called to your attention.

A The three instances I just enumerated: exterior painting, a roof leak or a window problem.

Q Will you state from the period of 1957 to the time of this accident in 1961 if you had occasion yourself, or on behalf of Mr. Murray, to do anything as far as the elevator was concerned in that building?

A Nothing at all from '57 through '61.

Q Will you state whether or not any request was ever received from anyone affiliated with the U.S. Government to do anything so far as the elevator was concerned?

A No request.

Q Will you state whether anyone connected with the United States Government ever made any complaints---

MR. KLEIN: Your Honor---

MR. GALIHER: (Continuing question): --concerning the condition of the elevator?

MR. KLEIN: These questions are clearly leading.

THE COURT: I don't think they are leading.

MR. KLEIN: I think they all call for a pre-determined response.

THE COURT: I think he can either answer yes or no. It doesn't suggest the answer.

THE WITNESS: Would you repeat the last question, please?

BY MR. GALIHER:

Q With respect to the condition of the elevator or need for any repairs to it during the period from the

time the Lease was entered into up to and including the
happening of the accident?

A No, sir.

* * *

GEORGE R. DOWLING,

* * *

DIRECT EXAMINATION

BY MR. KLEIN:

Q Mr. Dowling, for the record, will you tell his Honor and ladies and gentlemen of the jury your full name and address?

A George R. Dowling, 2506 Pawnee Street, Adelphi, Md.

Q Mr. Dowling, where are you employed?

A With GSA at the State Department, Elevator Repair foreman.

* * *

Q Now, Mr. Dowling, it is a fact, is it not, that if a 3-inch shaft wears down to an inch and three-quarters, any man in your capacity who inspects the overhead where such a shaft is located, upon inspection is going to immediately note that something is wrong with respect to the shaft, is not that a fact?

A If I inspect it, yes, sir.

Q And if a 3-inch shaft had worn to an inch and 3/4, that would tilt the idler sheave, would it not, and again, would be apparent to anybody making an examination or inspection of that area of the machine, would it not?

A If he inspected that area closely, yes, sir.

Q And if there was a worn bearing, Mr. Dowling, to any appreciable extent, again, if someone opened the cap of the pillow block, it could be observed, could it not?

A Yes, sir.

* * *

S14
WILLIAM J. SCHWEIDER
ON CROSS
By Mr. Galiher:

Q Did you say the bearings had worn away in the pillow block?

A Yes, sir.

Q That would mean, would it not, that the shaft would be resting -- since the bearing was no longer there to protect it -- it would be resting on the housing of the pillow block?

A As I showed you before, on the flange of the pillow block is where the shaft was resting.

Q And if that happened, it would make a terrific noise, would it not, as the elevator were operated up and down?

A It wouldn't make a terrific noise, no, sir.

Q Would it make a noise?

A It would make a distinct thumping.

566

However, --- I will now address myself to the Lease. I am inclined to agree this is not a question for the jury, and I think your Honor should decide it.

I won't give you my recollection of the testimony, your Honor. I would just like to read from the transcript.

THE COURT: Let me see if I heard you correctly: You agreed that it's not a question of fact for the jury, that it should be decided by the Court as a matter of law?

MR. KLEIN: And your Honor has said that, if you recall. You have said it, and I will quote you, your Honor. I won't rely on my memory, I will read from the transcript, your Honor. Mr. Galiber, gives me great reservations his recollection of the testimony. I am reading from page 9 of Mr. Schwieder's testimony. This was with respect to the Certificate of Inspection in the building, your Honor. That's what introduced the subject. I asked what kind of a certificate was used.

* * *

574

THE COURT: I honestly don't find it. Which paragraph is it?

I think I have it now: "... shall replace in whole or in part any facilities or mechanical installation which through deterioration or faulty construction, make it impossible to provide services available or agreed upon at the time of the Government's occupancy of the leased premises."

THE COURT: Is that what you rely on?

MR. KLEIN: Yes, and his admission that that includes the elevator. He categorically says that that includes the elevator.

GENERAL SERVICES ADMINISTRATIONRegion 3
Washington 25, D.C.

JUN 11 1957

IN REPLY REFER TO: 3PRU-J

Jerome S. Murray
1321 18th Street, N.W.
Washington, D.C.

Dear Mr. Murray:

There are enclosed two copies of the report of inspection on the
Stewart Building, 400 Sixth Street, N.W., Washington, D.C.

Please sign both copies of the report and return them to this office.
A signed copy of the report will be retained by you for your records
when it has been signed on behalf of the Government.

Very truly yours,

John T. Johnson

F. T. C. Leasing Branch

Enclosures

Original copies returned by
Murray on June 11, 1958.
Executive copy given to Murray
on same date.

7/29/58 jtg

K.A. ESTATE DIV.	
1. 100' STAN. CHUTE	<input type="checkbox"/>
2. 100' H. L. CHUTE	<input checked="" type="checkbox"/>
3. 100' CHUTE	<input type="checkbox"/>
4. 10' PURCHASE	<input type="checkbox"/>
5. 10' MDS UNIT	<input type="checkbox"/>

REPORT ON THE STEWART BUILDING

400 - 6th Street, N. W.
Washington, D. C.

Date Inspected: January 7, 1937

Inspected by: Roy O'Brien (Surveyor) 101 3902
H. R. Sage (Loc. Eng.) 6716
D. Morley (Loc. Eng.)
H. J. Sweetman (Leverton)

2000-1000

The Stewart Building is located at 400 6th Street, N. W. and is on the Northwest corner of 6th and D Street. There are two different levels, one of 6th Street being 11 feet 10 1/2 inches high or 1 1/2 stories high and the other portion approximately 12 1/2 feet on D Street, 5 1/2 feet and three stories high. Basement and first portion. Building is brick painted buff color with a regular base on D Street, which was previously used by Stewart's Furniture Apartment Store and has large front windows with black glass. Below windows is concrete base. There are three single door entrances on D Street and also two metal fire escapes, one for the 3 story portion and one for the 6th story portion. On 6th Street there are two single door entrances and double door main entrance, all of which is trimmed in black glass. All aluminum bolt covers over the windows on 6th Street and returning about 15 feet on D Street. Parking lot is located on the north and west sides of the building and the adjoining north building is being erected.

2000-1000

Roof over the 3 story portion is very poor and slag and appears in fair condition. Roof slopes to rear side which has sheet metal gutter and downspouts all painted but in poor shape. Sheet metal parapet on the D Street or south side appears in fair condition. Roof of 6th story portion is evidently sheet metal painted and in fair condition although downspouts need repairing.

Brickwork is generally in fair condition but could be re-painted. At west end on 6th Street, brickwork is cracked in three or four places and brick at roof line is end is leaning outward. West face of building is exposed brick with channel reinforcing. One portion very rough with mortar joints not filled and this portion was evidently at one time an interior wall. North face brickwork previously painted but now in need of repainting. Sheet metal gutters and downspouts all should be repaired or replaced. All wood windows need calling and new putty for the glass plus painting. Milling, etc. are down to the bare wood. Black glass trim of 1st floor windows are cracked in various places and in need of repairs.

NOTE: Painting is needed on interior walls, ceiling, woodwork and metal. All windows need recalking, putty and repainting on exterior. Information received on the job reveals that interior painting is being done by Government forces and that owner is to fix or repair floors. No information regarding repairs to the exterior of subject building.

INTERIOR

6th Floor

LARGE ROOM - Walls - w. 17' rock - painted - needs repainting and painting.
 Ceiling - " " " " " "
 Floor - asphalt tile - fair - wood base - painted.
 Windows - 6 2x3 wood single pane - side hinged.
 Skylight - 1x6 - 3 pane wire glass - fair condition.
 Doors (Stair) wood painted - 2 5x6 butts - brass knob -
 escutcheon cylinder lock above - mailslot - cheap
 plated hardware.
 Door (Closet) - Same as above.

NORTH ROOM
(SILL) - Same as large room
 Windows - 2 2x2 as above.
 Door - 1 5 panel wood painted - holes where locks were
 installed previously, should be filled in and door
 repainted.

SOUTH ROOM
(CORNER) - Same as large room.
 Windows - 6 15x36 single pane - circular at top - wood
 painted.
 Door - wood - 1/2 glass painted.

STORAGE ROOM
(WEST) - Walls same - ceiling same - floor wood painted. Wood door
 to unfinished attic. Joists charred by previous fire.
 Window - wood single pane - side hinged.
 Door - 4 panel wood - painted - 5'0" high

STAIRWAY
6th to 5th
floor - Walls - plaster - painted.
 Ceiling - plaster - painted.
 Stairs - wood - linoleum tread - metal nosing.
 wood handrail one side only.

5th Floor

LARGE ROOM - Walls - plaster - painted - painters at work
 Ceiling - acoustic plaster - unpainted - partition marks
 visible.
 Floor - asphalt tile - fair - Asphalt tile base - black

LARGE ROOM
(CONT'D)

Doors - 2 2x7 wood painted - 1/2 frosted glass
 3 5K butts. Brass knob and escutcheon cylinder
 lock with torn lube inside. Aluminum thresholds.
 Doors (Closet) - wood - 5 panel - painted.
 Windows - 8 wood double hanging - painted - single
 pane. 7 wood double hanging - painted - top half
 curved.

TOILET
(WOMEN'S)

Ceiling - plaster - painted
 Walls - plaster - painted - needs paint - 4 foot
 ceramic tile wainscot - OK
 Floor - ceramic tile - black and white - good condition
 Window - 1 wood double hanging painted - single pane -
 bottom frosted.
 Door - 1 wood - flush panel - painted - 2 5K butts -
 aluminum knob - no lock - aluminum sill.
 1 - toilet wall tank - 1 toilet partition - metal
 painted - 2 wall lavatories chrome hot and cold water -
 2 mirrors - 2 soap dispensers on wall - all fair.

TOILET
MEN

Same as above with 1 urinal and 1 lavatory. 2 wood
 flush panel doors - painted - 1 aluminum sill - 1 metal
 toilet partition - all fair condition.

STAIR HALL

Ceiling - acoustic - plaster - unpainted.
 Walls - plaster painted
 Floor asphalt tile needs repairs.
 Windows - 2 wood double hanging single pane - center mullion

5th to 4th
FLOOR STAIR

Metal risers and treads - ornamental handrail on wall side
 with wood rail. - all painted black.

4th FloorNORTH ROOM

Walls - plaster - being painted
 Ceiling - Acoustic plaster - unpainted.
 Floor and base - asphalt tile - fair
 Metal Partition to ceiling - simulated oak - 6 panels
 frosted glass - good.
 Door - metal - 1/2 frosted glass - bronze knob - escutcheon
 cylinder lock and night latch - good condition,
 Windows - 2 wood double hanging single pane - curved section
 on top. 2 small wood double hanging single pane curved
 section bottom.

LARGE ROOM

Same as above.
 Metal partitions at south end for other offices - good condition.
 Windows - 4 wood double hanging single pane and 2 double
 hanging on west side.
 Doors - 2 wood 1/2 frosted glass - brass hardware - turn knob
 inside - door closers - mail slots - 2 aluminum thresholds.
 good condition.

ROOM Same as above.
(CORNER) Windows - 4 wood double hanging - 1 small wood double hanging.
Door - metal - 1/2 frosted glass - metal partition same as above of
simulated oak - 4 panels frosted glass - good condition.

ROOM Same as above.
(MIDDLE) 2 windows - wood double hanging.
Door - same as above - metal partition - 5 panels frosted glass - good
condition.

ROOM Same as above - alcove.
WEST END Windows - 3 wood double hanging in alcove.

SLEEPING Same as above.

3rd Floor

LARGE ROOM Walls - plaster - painted - needs painting.
(D STREET) Ceiling - Acoustic plaster - unpainted - fair.
Floor - Asphalt tile floor and base - O.K.
Windows (D Street) - 4 large single pane fixed sash (new) flanked
by 2 smaller wood - single pane - side hinged.
3 wood - single pane with transoms over (fixed).
(Northside) - 10 wood double hanging - 2/2 all. above need putty
and paint.
8 plaster columns - painted.
Door (Hall) - same as above - 1/2 frosted glass - closer - hardware
and aluminum sill - fair condition.
Door (Large corner room) - wood - 5 panel - painted - hardware miss-
ing - aluminum sill..

LARGE ROOM Same as above.
CORNER Windows - (DStreet) - 7 wood double hanging - single pane - painted.
(6th Street) - 8 wood double hanging - single pane - painted.
- 3 wood small double hanging - single pane - painted.
Door (Hall) - Two (2) same as above - 1/2 frosted glass - no closers -
aluminum sill.
NOTE: Wood floor and asphalt tile needs repairing at two places.

TOILET Same as toilets above.
MEN 2 toilets - wall tank - 1 floor urinal - flushometers - 2 lavatories -
1 stop sink - 2 mirrors - 2 wall soap dispensers - 1 paper towel
container of metal - 2 wood flush panel doors - aluminum sills -
no closers - key knob with push button inside - metal toilet
partition and two doors - no windows in this toilet - all fair
condition.

TOILET Same as above - no urinal - 3 lavatories - 3 mirrors - 3 soap dis-
pensers - 2 wood double hanging windows - bottom frosted - 2 doors
wood flush panel - aluminum sill - no closers - aluminum key knob
with push button inside - all fair condition.

STAIR HALL Same as above - no windows.

STAIRS

NOTE: Venetian blinds on windows of this floor.

2nd Floor

LARGE ROOM Walls - ceiling - floors - same as room on 3rd floor.

(D Street) Windows (D Street) - 4 large fixed single pane flanked by 2 side hinged transoms over all windows (fixed).

1 - ditto above but smaller fixed sash in middle.

(Northside) - 13 wood double hanging 2/2 all need paint and putty - 1 pane broken.

8 plaster columns - painted.

Door (Hall) - same as above with closer and aluminum sill.

LARGE ROOM Same as 3rd floor.

CORNER Doors (Hall) - Two (2) metal painted - 1/2 frosted glass - closers - aluminum sill.

TOILET Same as 3rd floor - fair condition.

MEN

TOILET Same as 3rd floor - fair condition.

WOMEN

STAIR HALL Same as 3rd floor - no windows.

STAIRS

1st Floor

ENTRANCE Ceiling - plaster - painted - need paint.

ELEV. LOBBY Walls - plaster and wall board - painted - need paint.

AND STAIRS Floor - asphalt tile floor and base - fair.

Doors - Double - single solid glass - aluminum frame and transoms - Rixon floor hinges - aluminum sill - fair condition.

Door (Corner room) - double H.M. painted - 2 closers - brass key knob with thumb turn inside - fair condition.

Door (Basement) - H.M. door and frame - painted - closer - cheap hardware - fair condition.

LARGE ROOM Ceiling - walls - floor - same as above - asphalt tile floor needs repairs - wood base painted.

CORNER Door (6th Street) - wood frame - single pane full length glass - aluminum kick plate - push bar - mailslot - no closer.

Door (D Street) - same as above but with closer - fair.

Windows (6th Street) - store windows - single glass panes - three (3). (D Street) - store windows - single glass panes - seven (7).

Three wood steps up to elevator lobby.

Two steps down to lower level at D Street entrance.

Cased opening to stair to basement and 2 cased openings to room West.

LARGE ROOM Same as above - need painting.

WEST OF Door (D Street) - same as above

CORNER ROOM Windows (D Street) - store windows - single glass panes - five (5). Cased opening to North Hall and cased opening to next room West.

ROOM Same as above - need painting - wood base and shoe mold - painted.
WEST OF Door (D Street) - same as above - fair condition.
ABOVE Door (West side) - rolling steel door - painted - fair.
ROOM Windows - store windows - single glass panes - five (5).
Cased opening to North Hall - cased opening to N.W. room - wood gate.

ROOM Walls - plaster - painted - needs painting.
NORTHEAST Ceiling - plaster - painted - needs painting.
Floor - asphalt tile - wood base and shoe mold - painted.

NORTH HALL State of disrepair - walls broken and unfinished - ceiling partially insulated - no finish - floor torn up in places.

STAIRS Walls - plaster - painted - needs painting.
TO BASEMENT Ceiling - plaster - painted - needs painting.
Landing - asphalt tile.
Stairs - wood - unfinished - wood handrail.

ROOM Walls - plaster - need painting.
N.E. CORNER Ceiling - Acoustic plaster - not painted.
Floor - formerly asphalt tile which has all been stripped off.
Door - (6th Street) - same as others on 6th Street.
Window - store window - single pane glass - one (1).

Basement

LARGE ROOM Ceiling - plaster - painted - needs painting.
Walls - plaster - painted - needs painting.
Floor - Concrete floor and base - unpainted - floor ramp at West side.

NORTH ROOM Brick walls - not painted - water on floor from leaks - window glass broken.
Windows (areaway) - 2 wood double hanging - single pane.

WEST ROOM Walls - plaster - bad shape - needs repairs and painting.
Ceiling - plaster - bad shape - needs repairs and painting.
Floor - Concrete floor and base - not painted - water on floor - leaks.
Door - metal frame - wood door - cheap hardware - needs paint.

STAIRWAY Walls - plaster - painted - needs painting.
FROM ELEV. Ceiling - plaster - painted - needs painting.
LOBBY Stairs - metal - painted - needs painting.

ELEVATOR Ceiling - plaster - painted - needs painting.
LOBBY Walls - plaster - painted - needs painting.
Floor - concrete - not painted.
Door (Elev. Mach.) - H.M. door and frame - painted - needs painting.

BOTTLE ROOM Unfinished - bare brick walls - concrete floor, etc.
Door - H.M. door and frame - no closer - key knob with thumb turn inside.

ELECTRICALFirst Floor

<u>VESTIBULE</u>	1 - fluorescent fixture - 2 tube.
<u>CORRIDOR</u>	3 - fluorescent fixtures - 2 tube. 1 - fire alarm station. 1 - 10" gong. 1 - exit light.
<u>OFFICE</u> 6th & D Streets	13 - 4 tube suspension type fluorescent fixtures. 6 - 96" 4 tube fluorescent ceiling type in windows. 8 - wall switches. 12 - wall receptacles. 2 - time clocks. 1 - 8 circuit panel.
<u>ROOM 1</u> West on D Street	8 - 4 tube ceiling type fluorescent fixtures. 1 - 96" 4 tube ceiling type fluorescent fixture in window. 7 - wall receptacles. 3 - wall switches.
<u>ROOM 2</u> West on D Street	3 - 96" 4 tube ceiling type fluorescent fixtures in windows. 16 - 4 tube suspension type fluorescent fixture. 1 - time clock. 5 - wall switches. 9 - wall receptacles. 1 - floor receptacle. 1 - 8 circuit panel.
<u>ROOM 3</u> West on D Street	3 - 96" 4 tube ceiling type fluorescent fixtures in windows. 16 - 4 tube suspension type fluorescent fixtures. 1 - time clock. 5 - wall switches. 9 - wall receptacles. 1 - 8 circuit panel.
<u>SMALL OFFICE</u>	2 - 2 tube ceiling type fluorescent fixtures. 1 - wall switch. 2 - wall receptacles.
<u>STORE</u> <u>ROOM</u>	4 - ceiling lights. 2 - wall switches.

Second Floor

<u>CORRIDOR</u>	3 - ceiling fixtures. 1 - exit light. 1 - fire alarm station. 1 - 10" gong. 1 - 10 circuit panel. 1 - 6 circuit panel.
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TOILET 2 - ceiling lights - no glass.
WOMEN 1 - outlet - no fixture.
 1 - switch and receptacle.

TOILET 2 - ceiling lights - no glass.
MEN 1 - switch and receptacle.

OFFICE 25 - 2 tube ceiling type fluorescent fixtures.
6th & D 7 - ceiling bands.
Streets 3 - exit fixtures.
 3 - wall switches.
 3 - wall receptacles.
 6 - floor receptacles.

LARGE OFFICE 1 - time clock.
D Street 1 - fire alarm station.
 1 - exit light.
 40 - 2 tube ceiling type fluorescent fixtures.
 5 - wall switches.
 34 - wall receptacles.
 5 - ceiling bands - no glass.
 1 - panel with 16-20 amp. circuits and 2-60 amp. circuits.
 1 - 4 panel with 4-20 amp. circuits.

Third Floor

CORRIDOR 3 - ceiling fixtures.
 1 - exit light.
 1 - fire alarm station.
 1 - 10" gong.
 1 - 10 panel 10-20 amp. circuit.

TOILET 3 - ceiling fixtures - no glass.
WOMEN 1 - switch and receptacle.

TOILET 2 - ceiling fixtures - no glass.
MEN 1 - switch and receptacle.

OFFICE 25 - 2 tube ceiling type fluorescent fixtures.
6th & D 4 - wall switches.
Streets 17 - wall receptacles.
 2 - exit fixtures.
 7 - ceiling bands - no glass.
 12 - floor receptacles.

LARGE OFFICE 40 - 2 tube ceiling type fluorescent fixtures.
D Street 4 - ceiling bands - no glass.
 1 - fire alarm station.
 1 - 10" gong.
 1 panel with 16-20 amp. circuits and 2-100 amp. circuits.
 26 - wall receptacles.
 4 - wall switches.
 18 - floor receptacles.

Fourth Floor

- CORRIDOR 2 - ceiling fixtures.
 1 - fire alarm station.
 1 - 10" gong.
 1 - exit fixture.
 1 - panel 8-20 amp. circuits.
- TOILET WOMEN 2 - ceiling lights - no glass.
 1 - switch and receptacle.
- TOILET MEN 2 - ceiling lights - no glass.
 1 - switch and receptacle.
- SMALL ROOM 1 - 2 tube ceiling type fluorescent fixture.
 1 - wall receptacle.
- SMALL OFFICE 5 - 2 tube ceiling type fluorescent fixtures.
 6th Street 1 - floor receptacle.
 3 - wall receptacles.
 1 - wall switch.
- LARGE OFFICE 12 - 2 tube ceiling type fluorescent fixtures.
 6th Street 2 - ceiling bands - no glass.
 4 - floor receptacles.
 2 - exit fixtures.
 7 - wall receptacles.
 4 - wall switches.
- SMALL OFFICE 2 - 2 tube ceiling type fluorescent fixtures.
 6th & D. 1 - ceiling band - no glass.
 Streets 3 - wall receptacles.
 1 - floor receptacle.
- SMALL OFFICE 4 - 2 tube ceiling type fluorescent fixtures.
 D Street 1 - ceiling band - no glass.
 3 - wall receptacles.
 1 - floor receptacle.
- SMALL OFFICE 4 - 2 tube ceiling type fluorescent fixtures.
 D Street 1 - ceiling band - no glass.
 4 - wall receptacles.
 2 - floor receptacles.
 1 - PBX telephone switchboard.
 1 - Western Union Station.

Fifth Floor

<u>CORRIDOR</u>	2 - ceiling fixtures 1 - fire alarm station 1 - 10" gong 2 - exit fixtures 1 - panel 8-20 amp. circuits
<u>TOILET WOMEN</u>	2 - ceiling type fixtures 1 - switch and receptacle.
<u>TOILET MEN</u>	2 - ceiling type fixtures 1 - switch and receptacle.
<u>LARGE OFFICE</u>	20 - 2 tube ceiling type fluorescent fixtures. 3 - ceiling bands - no glass 16 - wall receptacles 3 - wall switches

Sixth Floor

<u>SMALL OFFICE</u>	1 - ceiling fixture 1 - wall switch
<u>SMALL OFFICE</u>	1 - 2 tube ceiling type fluorescent fixture 1 - wall switch
<u>LARGE OFFICE</u>	6 - ceiling fixtures 2 - wall switches 6 - wall receptacles
<u>STAIRS</u>	2 - ceiling fixtures 1 - fire alarm box

Basement

<u>BASEMENT</u>	11 - 2 tube ceiling type fluorescent fixtures 9 - wall receptacles 2 - 4 tube ceiling fixtures 5 - wall switches. 1 - exhaust fan 1 - electric sidewalk lift capacity 2,000 lbs. Inspection expired 6/30/55
<u>BOILER ROOM</u>	2 - drop lights 1 - wall switch
<u>STAIRS To Boiler Room</u>	3 - ceiling type fixtures 1 - fire alarm station 1 - 10" gong
<u>STAIRS To Basement on D St.</u>	1 - light fixture 1 - wall switch

1 - Marsh Elevator

10 passenger

1,500 lbs.

Elevator inspection certificate #300027 will expire 6/30/57

There is an underground service from D Street to a 400 amp., 3 phase, 4 wire service switch in boiler room. Also a D. C. service to a 60 amp. service switch in boiler room for elevator motor, metering equipment and disconnect switches are located in basement near elevator.

NOTE:

1. Wiring in boiler room should be checked and conduits strapped up. It is in bad condition.
2. All fixtures should be checked and securely fastened and glassware replaced where needed.
3. Branch circuit wire appears to be in good condition but should be checked for over-load.
4. Replace 10 broken wall switches and 12 receptacles.

PLUMBING AND HEATING

1. WATER DISTRIBUTION: Water is supplied to this building through a high pressure system in the building at street main pressures. No gauges were available to determine the pressure at the time of the inspection. Piping appears generally to be in fair condition. With an expected short term occupancy it is not deemed necessary to make major corrections to the piping system. Any minor leaks that develop may be repaired as occupancy repairs.

Soil and waste lines are cast iron soil pipe and appear to be in serviceable condition except that there appears to be certain points in the basement area where un-plugged pipes appear. These should be plugged off to prevent sewer gas from coming into the building.

2. INSULATION: Insulation on piping and boilers is in very bad condition and repairs should be made for conservation of fuel.

3. BOILERS: Two cast iron sectional type American Radiator Co. S-36-8 boilers are installed, but only one is in operation and appears to be in good condition. The other boiler (the one nearest 6th Street) should be repaired in order to have a stand by boiler.

4. STEAM HEATING: The three story section and five story sections of this building are amply heated with a one pipe steam heating system with the exception of the Entrance Lobby, the future snack bar and the large office at the corner of 6th Street and D Street N.W. The owner has agreed to the Navy Department to install sufficient radiation if the present installed radiation is not ample to properly heat the first floor areas, but nothing is said about lobby heating. Provision for heating the Entrance Lobby should be made.

5. TOILET FACILITIES: At present there is a men's and a women's toilet on each floor (except first) of the five story section of the building. No toilet facilities for the three story section have been provided. The Buildings Management Forces are installing toilet facilities on the first floor for both men and women.
6. DRINKING WATER: No electric water coolers or other means of providing drinking water exist. At present there are stubbed-in, a drain and cold water connection which might be used for drinking water in the five story section of the building. Drinking water should be provided for the three story section.
7. FIRE PROTECTION: No fire hose reels are installed. The present fire fighting equipment consists of fire extinguishers located on each floor.
8. GUTTERS AND DOWNSPOUTS: Are incorporated in the construction section of this report.
9. WINDOW UNIT COOLERS: On the fourth floor there are at present five (5) 3/4 ton 3/4 HP window type unit coolers, installed. In the future snack bar space on the first floor there is a 5 ton (5 HP) package unit with a short duct run installed. The five window unit coolers on the fourth floor appear to be in good condition and are now operative. They need cleaning very badly. The 5 ton unit will require a general over haul prior to operating.

PASSENGER ELEVATOR:

Manufacturer - Marsh Elevator Company, Baltimore, Maryland
 Duty - 10 passengers, 1,500 pounds at 100 F.P.M.
 Type - Basement traction - D. C. current operation.
 Roping - 4 - 5/8" 3 X 19 traction steel - 1 to 1.
 Interlocks - Bar type.
 Collapsing car gate with gate contact.
 Car switch control
 Estimated age of elevator equipment 30 years.

CONDITION:

Equipment is in very poor state of repair throughout.
 Machine and controller very poorly maintained. Controller contacts very badly worn and burned.
 Excessive gear and end thrust wear.
 Hoistway equipment very dirty. Grease and lint accumulation on rails, overhead, etc.
 Open grill hoistway on all floors except 1st floor. First floor door and hoistway closed with sheet metal over the grill work.
 Last governor and safety test made by District Government about 3 years ago.
 Hoist cables show excessive wear and numerous breaks.

Overhead clearance when car is at top floor 14".
 Pit clearance approximately 3'6". Pit is filled with trash and paper.
 This elevator, due to age and lack of maintenance will not give adequate service if this building is fully occupied.

*Roy O'Brien
 H. R. Sago
 T. Herliny
 W. J. Sweetman per D. J.*

Roy O'Brien (General)
 H. R. Sago (Mechanical)
 T. Herliny (Electrical)
 W. J. Sweetman (Elevators)

Review and Concur:

C. A. Caldwell

C. A. Caldwell,
 Chief, Construction
 and Supervision Branch

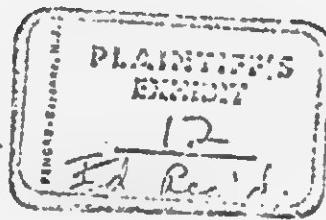
The foregoing report represents the condition of the building as of January 7, 1957.

J. S. Murray

Jerome S. Murray, Lessor

J. W. Rankin

J. W. Rankin
 Chief, Leasing Branch



2941-62

December 19, 1956

FILED

FEB. 5 1959

RE: Plaintiff's Exhibit No. 12
400 Sixth Street, N.W., Washington, D.C.
Washington, D.C.

Mr. J. W. Rankin
Chief, Building Division
General Services Administration, Washington
7th and D Streets, S. E.
Washington 25, D. C.

Dear Mr. Rankin:

This will confirm our understanding with respect to the initial conditioning of the above building to be provided by the lessor as part of the rental consideration.

1. The boilers and heating equipment will be delivered in good operating condition and will meet D. C. inspection requirements.
2. Radiation will be restored on the 1st and 3rd floors where it has been removed.
3. Elevators will be delivered in good operating condition with D. C. certificate.
4. The electrical, plumbing and toilets will be delivered in good operating condition. Toilets and sinks will be cleaned and sterilized.
5. The Government shall have the right to use the Parry-Martin partitioning now in storage on the 6th floor. The other partitioning to remain "as is", and to be used by the Government in the building as it chooses.
6. The Government shall have the right to use the 5 window air conditioning units now installed in the building.
7. Necessary repairs will be made to the floor coverings.
8. Missing venetian blinds will be replaced.
9. All necessary pointing up of plaster will be done and will be prime coated. No other painting will be accomplished by the lessor.

Mr. J. W. Rankin

10. The building will be delivered in clean and weather-tight condition.

The terms and conditions covering the leasing of the building by the Government, as outlined in your telegram dated December 18, 1956, is hereby accepted.

Very truly yours,

Jerome S. Murray
Jerome S. Murray

Copy of letter given to
Geo. Smith 1-3-57.

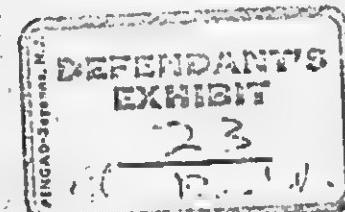
Douglas

GS-03-B-4203

CA 2941-62

LEASE

BETWEEN
JEROME S. MURRAY
AND
THE UNITED STATES OF AMERICA



1. THIS LEASE, made and entered into this 25th day of February, 1957, by and between

Jerome S. Murray,

whose address is 1311 Allison Street, N. W., Washington, D. C.

for himself, his heirs, executors, administrators, successors, and assigns, hereinafter called the Lessor, and THE UNITED STATES OF AMERICA, hereinafter called the Government.

WITNESSETH: The parties hereto for the considerations hereinafter mentioned covenant and agree as follows:

2. The Lessor hereby leases to the Government the following-described premises, viz:

The entire building, together with all appurtenances thereto belonging, known as the Stewart Building and located at 100 Sixth Street, N. W., Washington, D. C., situated on Lot 200 in Square 137 of the District of Columbia, which is described in the Deed of Conveyance from John H. Stewart to Jerome S. Murray, dated January 1, 1952, recorded in the Office of the Recorder of Deeds of the District of Columbia, Deed Book 2002, page 202, bearing record number 1069.

to be used exclusively for the following purposes (see instruction No. 3):

Governmental purposes. The Lessor shall not use or allow the said building to be used for any other purpose than governmental purposes, and the Government shall not use the same for any other purpose than governmental purposes.

3. To HAVE AND TO HOLD the said premises with their appurtenances for the term beginning January 1, 1957, and ending December 31, 1961, and thereafter for successive one-year periods, and ending with December 31, 1961. The Government shall have the right to cancel this lease, in whole or in part, at any time after December 31, 1957, by giving sixty (60) days notice, in writing, to the Lessor, such notice to be computed starting with the day following the date of mailing.

4. The Government shall not assign this lease in any event, and shall not sublet the demised premises except to a desirable tenant, and for a similar purpose, and will not permit the use of said premises by anyone other than the Government, such sublessee, and the agents and servants of the Government, or of such sublessee.

5. This lease may, at the option of the Government, be renewed from year to year at a rental of (see paragraph seven hereof)

and otherwise upon the terms and conditions herein specified, provided notice be given in writing to the Lessor at least _____ days before this lease or any renewal thereof would otherwise expire: Provided that no renewal thereof shall extend the period of occupancy of the premises beyond the _____ day of _____.

6. The Lessor shall furnish to the Government, during the occupancy of said premises, under the terms of this lease, as part of the rental consideration, the following:

The building and all appurtenances thereto belonging, including all operating and service facilities and equipment existing at the time of occupancy or agreed upon by the Government and the Lessor.

The Lessor shall make all necessary repairs to the exterior walls, roof and structure of the building, including exterior painting, required for the preservation thereof, not caused by the negligence of the Government's agents or employees, and in addition, shall keep the building in a weather-tight condition and shall replace in whole or in part any facilities and/or mechanical installations which through deterioration or faulty construction make it impossible to provide the services available or agreed upon at the time of the Government's occupancy of the leased premises.

The Lessor agrees to comply with all local ordinances, regulations and statutes relating to buildings and their equipment, to make or have made such changes as required to bring such structure or equipment into conformity therewith, and to pay all taxes, duties or charges levied, or to be levied, on said premises during the term of this lease, except gas, electric current, water charges and fuel.

The Government shall, at its expense, furnish all necessary labor and material for the maintenance and custodial services of the building, including interior painting, maintenance of mechanical equipment, alterations or additions to plumbing, heating and electrical facilities, partition work, floor covering, and any other physical improvements required for the specific needs of the Government.

7. The Government shall pay the Lessor for the premises rent at the following rate:

Twenty-four Thousand Dollars (\$24,000.00) per annum, payable in equal monthly installments of Two Thousand Dollars (\$2,000.00) each.

Payment shall be made at the end of each month in arrears without the submission of an invoice or voucher. Payment for any part-month rental will be made at the end of the first calendar month of the term of the lease.

8. The Government shall have the right, during the existence of this lease, to make alterations, attach fixtures, and erect additions, structures, or signs, in or upon the premises hereby leased (provided such alterations, additions, structures, or signs shall not be detrimental to or inconsistent with the rights granted to other tenants on the property or in the building in which said premises are located); which fixtures, additions, or structures so placed in or upon or attached to the said premises shall be and remain the property of the Government and may be removed therefrom by the Government prior to the termination of this lease, and the Government, if required by the Lessor, shall, before the expiration of this lease or renewal thereof, restore the premises to the same condition as that existing at the time of entering upon the same under this lease, reasonable and ordinary wear and tear and damages by the elements or by circumstances over which the Government has no control, excepted: Provided, however, that if the Lessor requires such restoration, the

Lessor shall give written notice thereof to the Government forty-five (45) days before the termination of the lease.

9. The Lessor shall, unless herein specified to the contrary, maintain the said premises in good repair and tenable condition during the continuance of this lease, except in case of damage arising from the act or the negligence of the Government's agents or employees. For the purpose of so maintaining the premises, the Lessor reserves the right at reasonable times to enter and inspect the premises and to make any necessary repairs thereto.

10. If the said premises be destroyed by fire or other casualty this lease shall immediately terminate. In case of partial destruction or damage, so as to render the premises untenable, either party may terminate the lease by giving written notice to the other within fifteen days thereafter, and if so terminated no rent shall accrue to the Lessor after such partial destruction or damage.

11. No Member of or Delegate to Congress or Assistant Commissioner shall be admitted to any share or part of this lease or to any benefit to arise therefrom. Nothing, however, herein contained shall be construed to extend to any income accrued or arising, if the lease be for the general benefit of such corporation or company.

12. Lease Rider, containing Paragraphs 13 and 14, is attached hereto and made a part hereof. Deletion of Paragraphs 5 and 9 in their entirety were made before this lease was signed by either party.

Hand and all witnesses know, that in the writing of this lease, all of the above and below mentioned persons did sign and affix their names to the same, and that they do so in their individual capacities, and not in any representative capacity, all to our mutual knowledge.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

In presence of:

John J. O'Leary
John J. O'Leary
(Address)
Ogallala, Neb.
Attest: John J. O'Leary
Date: June 20, 1961

JEROME C. MURRAY

UNITED STATES OF AMERICA,

By *J. J. O'Leary*
John J. O'Leary
Ogallala, Nebraska
Public Building Service, Region 3
General Services Administration

(If Lessor is a corporation, the following certificate shall be executed by the secretary or assistant secretary.)

I, John J. O'Leary, Secretary of the corporation named as Lessor in the attached lease; that John J. O'Leary, who signed the lease, is a full-fledged employee of the corporation, and is duly authorized to bind the corporation by contract; who signed said lease on behalf of the Lessor, was then

employed by John J. O'Leary of said corporation; that said lease was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers, and to witness and attest to the same, I, John J. O'Leary, of Ogallala, Nebraska, do hereby certify upon the basis of the information contained in the foregoing affidavit, that

[CORPORATE SEAL]

INSTRUCTIONS TO BE OBSERVED IN EXECUTING LEASE

1. This standard form of lease shall be used whenever the Government is the lessee of real property; except that when the total consideration does not exceed \$100 and the term of the lease does not exceed 1 year the use of this form is optional. In all cases where the rental to be paid exceeds \$2,000 per annum the annual rental shall not exceed 15 per centum of the fair market value of the rented premises at the date of lease. Alterations, improvements, and repairs of the rented premises by the Government shall not exceed 25 per centum of the amount of the rent for the first year of the rental term or for the rental term if less than 1 year.
2. The lease shall be dated and the full name and address of the lessor clearly written in paragraph 1.
3. The premises shall be fully described, and, in case of rooms, the floor and room number of each room given. The language inserted at the end of article 2 of the lease should specify only the general nature of the use, that is, "office quarters," "storage space," etc.
4. Whenever the lease is executed by an attorney, agent, or trustee on behalf of the lessor, two authenticated copies of his power of attorney, or other evidence to act on behalf of the lessor, shall accompany the lease.
5. When the lessor is a partnership, the names of the partners composing the firm shall be stated in the body of the lease. The lease shall be signed with the partnership name, followed by the name of the partner signing the same.
6. Where the lessor is a corporation, the lease shall be signed with the corporate name, followed by the signature and title of the officer or other person signing the lease on its behalf, duly attested, and, if requested by the Government, evidence of his authority so to act shall be furnished.
7. Under paragraph 6 of the lease insert necessary facilities to be furnished, such as heat, light, janitor service, etc.
8. There shall be no deviation from this form without prior authorization by the Director of Procurement, except—
 - (a) Paragraph 3 may be drafted to cover a monthly tenancy or other period less than a year.
 - (b) In paragraph 5, if a renewal for a specified period other than a year, or for a period optional with the Government is desired, the phrase "from year to year" shall be deleted and proper substitution made. If the right of renewal is not desired or cannot be secured paragraph 5 may be deleted.
 - (c) Paragraph 6 may be deleted if the owner is not to furnish additional facilities.
 - (d) If the premises are suitable without alterations, etc., paragraph 8 may be deleted.
 - (e) Paragraph 9 provides that the lessor shall, "unless herein specified to the contrary, maintain the said premises in good repair, etc." A modification or elimination of this requirement would not therefore be a deviation.
 - (f) In case the premises consist of unimproved land, paragraph 10 may be deleted.
 - (g) When executing leases covering premises in foreign countries, departure from the standard form is permissible to the extent necessary to conform to local laws, customs, or practices.
 - (h) Additional provisions, relating to the particular subject matter mutually agreed upon, may be inserted, if not in conflict with the standard provisions, including a mutual right to terminate the lease upon a stated number of days' notice, but to permit only the lessor so to terminate would be a deviation requiring approval as above provided.
9. When deletions or other alterations are permitted specific notation thereof shall be entered in the blank space following paragraph 11 before signing.
10. If the property leased is located in a State requiring the recording of leases in order to protect the tenant's rights, care should be taken to comply with all such statutory requirements.

GENERAL SERVICES ADMINISTRATION
REGION 3

LEASE RIDER

13. The Lessor warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employer or bona fide established or licensed selling agencies maintained by the lessor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this lease without liability or in its discretion to deduct from the rent or consideration the full amount of such commission, percentage, brokerage or contingent fee.
14. In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of the nondiscrimination clause. The Contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

GENERAL SERVICES ADMINISTRATION



100-6-11
100-110
7-27-57
CONF

Region 3
Washington 25, D. C.

February 27, 1957

IN REPLY REFER TO: 3PBN

FILED
FEB 7 1969
ROBERT W. SURNIA, CLERK



Mr. Jerome S. Murray
Stewart's Corner Inc.
501 - 7th Street, N. W.
Washington, D. C.

Dear Mr. Murray:

An inspection of the premises at 400 - 6th Street, N. W., has been made by our Safety and Fire Protection Office. The following items which require corrective action are understood by the terms of the lease to be the responsibility of the owner:

- 1. Exposed joists in the ceiling of the boiler room should be covered with a suitable fire resistive material. *get Price*
- 2. All elevator doors should be put in proper operating condition and those with open grille work should be protected with metal covering. *get Price*
- 3. The exposed wood laths in the elevator shaft should be covered with a fire resistive material. *get Price*
- 4. The opening at the top of the elevator shaft should be covered with a fire resistive material. *get Price*
- 5. The fire escape on the southwest side of the building has a bracket in need of repair and the bricks in the wall, to which the bracket is anchored, are loose. Also, a safety chain should be provided at the opening of the rail on the second floor landing.
- 6. The fire escape landing on second floor, southeast side of the building, should be provided with an opening and safety chain.
- 7. The chimney leans badly and should be checked to insure that it is safe and sound.

Mr. Jerome S. Murray

PAGE 60
FEB 1947

8. The west wall of the low part of the building appears to be unsafe since it has assumed a position that is noticeably out of vertical.

Your cooperation in correcting these deficiencies will be appreciated.

Sincerely yours:

George A. Smith

Coop. A. Smith
Muscatine, North Axon
Region 3

George A. Smith
Certified - the Editor sent off 2
copy - sent off John L. Cole

CA 2941-62

FILED
FEB 7 1969
ROSEHORN, M. S., CLERK, U.S. DISTRICT COURT



April 1, 1967

Mr. George A. Smith
Manager, North Area
Region 3
General Services Administration
Washington 25, D. C.

Ref: 3PBN

Dear Mr. Smith:

It is my understanding that G.S.A. will take care of item #2 (referring to elevator repairs) in your letter of February 27, 1967, in lieu of reimbursing Mr. Murray for his expense of boiler operations and coal purchased for the Stewart Building after the Bureau of Ships had taken possession.

Thank you for your consideration in this matter.

Very truly yours,

WTA/mof

WILLIAM T. ALTHOFF

REPORT OF ATTORNEY GENERAL
TO THE HOUSE OF REPRESENTATIVES

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,747

ALICE W. JOHNSON,
Appellant

v.

JEROME S. MURRAY,
Appellee

*Appeal from the United States District Court
for the District of Columbia*

United States Court of Appeals
for the District of Columbia Circuit

BRIEF FOR APPELLANT

FILED OCT 17 1969

Nathan J. Paulson
CLERK

Simon Tucker
Of Counsel

Samuel C. Klein
910 17th Street, N.W.
Washington, D.C. 20006
Attorney for Appellant



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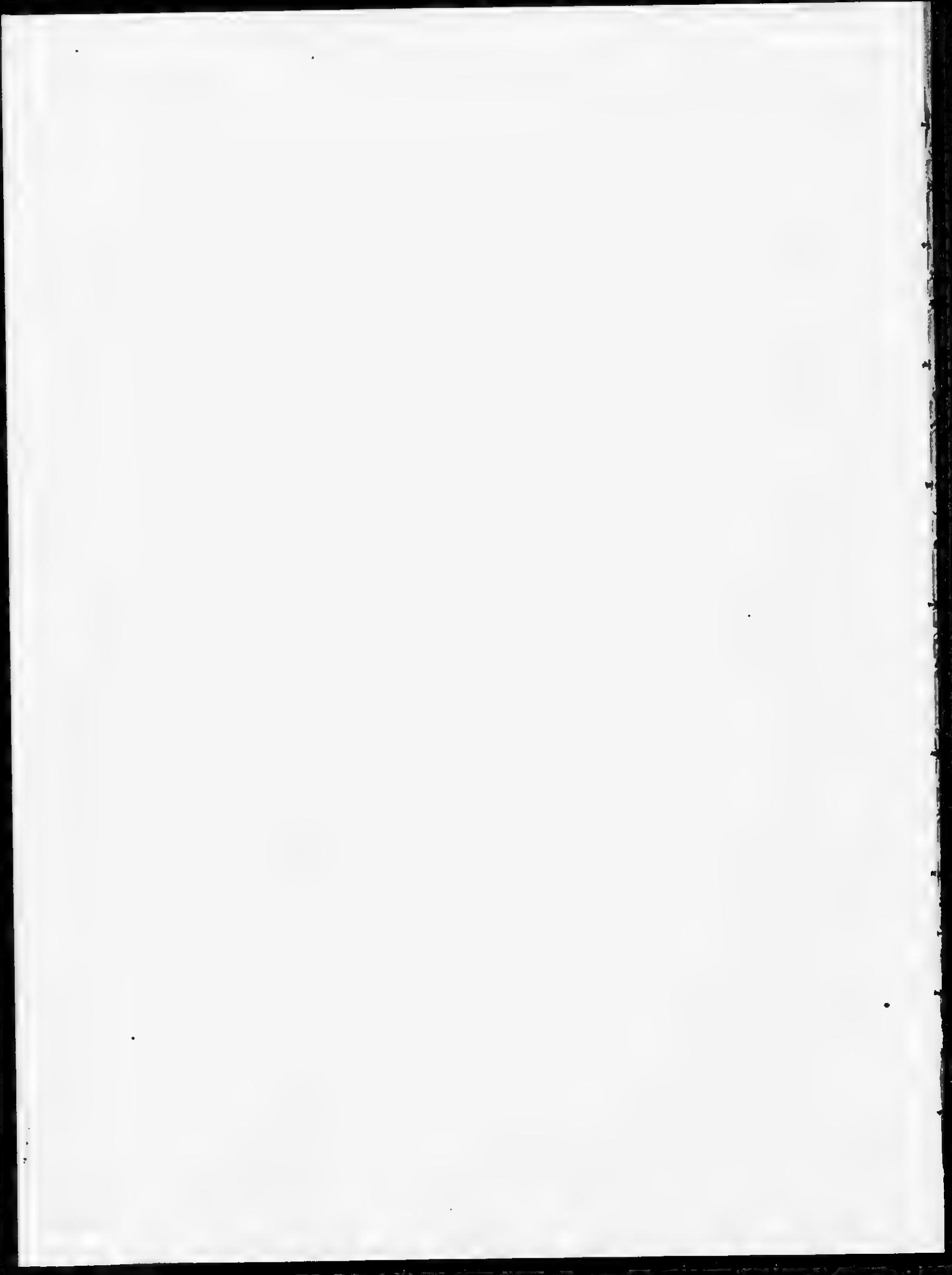
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v.

JEROME S. MURRAY,
Appellee

*Appeal from the United States District Court
for the District of Columbia*

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an action for damages resulting when an elevator in which she was riding as a passenger fell causing injuries to the plaintiff. The case was tried before the Honorable Joseph C. McGarraghy, United States District Court Judge, and a jury, in a trial running from November 4, 1968 to November 25, 1968. At the end of the trial the Court granted defendant's motion for a directed verdict. The order was entered November 25, 1968. The appeal was filed December 5, 1968.

The jurisdiction of this Court rests on 28 U.S. Code 1291.

A segment of this case was previously before this Court: Murray v. U.S. of America, No. 21,357, decided October 31, 1968.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

This appeal involves the following issues:

1. Whether the owner of a building is responsible for the condition of the elevator in the building in which elevator an employee of the Government is injured, when the building was occupied by the Government under a lease containing the following provisions:
 - a. The owner "shall furnish to the Government, during the occupancy of said premises, under the terms of this lease, as part of the rental consideration, the following: The building and all appurtenances thereto belonging, including all operating and service facilities and equipment existing at the time of occupancy or agreed upon";
 - b. The owner "shall make all necessary repairs to the exterior walls, roof and structure of the building, including exterior painting required for the preservation thereof";
 - c. The owner "shall replace in whole or in part any facilities and/or mechanical installations which through deterioration or faulty construction make it impossible to provide the services available or agreed upon at the time of Government's occupancy of the leased premises";
 - d. "The Government shall, at its expense, furnish all necessary labor and material for the maintenance and custodial services of the building including interior painting, maintenance of mechanical equipment, alterations, or additions to plumbing, heating and electrical facilities".
2. Whether under The Elevator Regulations of the District of Columbia, the owner of the building retains responsibility for the

condition of the elevator in which the injury occurred, despite the fact that the building was leased to and occupied by the Government, particularly when the lease states that the owner shall "comply with all local ordinances, regulations and statutes relating to buildings and their equipment" and shall "make or have made such changes as required to bring such structure or equipment into conformity therewith".

3. Whether, even assuming the terms of the lease relieve the owner of the building of responsibility for the condition of the elevator, the owner can be held responsible for the condition of the elevator existing at the time of and before the lease, where the condition of the elevator is found by a jury to cause an accident and injury during the term of the lease.

STATEMENT OF THE CASE

Appellant is the plaintiff in a suit for injuries sustained when an elevator fell two and a half floors. Appellee, the defendant below, is the owner of the building in which the elevator fall had occurred. At the time of the elevator fall, the building was under lease to the Government, and the plaintiff was an employee of the Government working in the building.

Prior to the trial below, defendant had made a Motion for Summary Judgment on the ground that, under the lease to the Government, the defendant had no responsibility for the condition of the elevator leading to the accident and injury to plaintiff. This Motion for Summary Judgment by the defendant was denied May 3, 1968. A Motion for Summary Judgment by the plaintiff was also denied.

The trial below commenced November 4, 1968. Plaintiff placed in evidence her own testimony, the testimony of the elevator oper-

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

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 - c. The owner "shall replace in whole or in part any facilities and/or mechanical installations which through deterioration or faulty construction make it impossible to provide the services available or agreed upon at the time of Government's occupancy of the leased premises";
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3. Whether, even assuming the terms of the lease relieve the owner of the building of responsibility for the condition of the elevator, the owner can be held responsible for the condition of the elevator existing at the time of and before the lease, where the condition of the elevator is found by a jury to cause an accident and injury during the term of the lease.

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The trial below commenced November 4, 1968. Plaintiff placed in evidence her own testimony, the testimony of the elevator oper-

ator at the time of the accident, and, among others, the testimony of Government personnel responsible for the safe condition of elevators in buildings occupied by the Government, including personnel who had inspected the elevator wherein the injury had occurred both before and immediately after the accident. The lease was not placed in evidence as part of the plaintiff's case. At the end of the plaintiff's case, defendant moved for a directed verdict on the ground that the defendant had no responsibility for the condition of the elevator at the time the accident and injury occurred. The trial Judge denied this motion.

Defendant then put on his case, and put into evidence testimony from Government and District of Columbia personnel who had inspected the elevator before and immediately after the accident, from an expert witness on elevator manufacturing and installation, and from the defendant-owner of the building and his son-in-law who had assisted him in negotiating the lease of the building to the Government. In the court of the testimony by these latter two, the lease between the owner of the building and the Government was put into evidence.

After termination of the defendant's case and some rebuttal testimony by plaintiff, the defendant made a motion for a directed verdict on the ground that, under the lease the Government, not the defendant, had responsibility for the condition of the elevator at the time the accident took place.

On November 25, 1968—after a trial that had been running since November 4, the Judge below granted defendant's motion for a directed verdict; thereby, in effect, reversing the pre-trial denial of the Motion for Summary Judgment.

The ruling of the court below forming the basis of this appeal appears at Tr. pp. 580-3 and at pp. 12-14 of Appendix.

In the course of his ruling, the trial Judge stated as follows:

... in my view of the case, and my interpretation of the relationship between the United States and the owner of the building, and my view of the interpretation of the Lease, there is no issue of fact here to submit to the jury. I am of the opinion, as a matter of law, that there is no liability on the part of the owner of the premises under the circumstances of this case . . . I have come to the conclusion that the plaintiff has not shown any duty owing by the defendant to a passenger on the elevator who was an employee of the United States . . . The Court finds, as a matter of law, under the terms of the Lease, the owner of the building was not required to take any further action to repair the elevator, under the circumstances. (Transcript pp. 580-3).

SUMMARY OF THE ARGUMENT

1. The Court below erred in directing a verdict for the defendant-owner on the ground that, under the lease, the defendant had no responsibility for the condition of the elevator at the time when the injury to plaintiff occurred:

a. Because the lease put upon the defendant-owner responsibility for providing continuously, during the occupancy of the building by the Government, elevators in good operating condition, and for maintaining the elevators in a state of repair and good working order and replacing them in whole and in part when, for any reason, they failed to remain in serviceable condition; while the lease put upon the Government only the responsibility for current maintenance and custodial services with respect to the elevators; and

b. Because the lease put upon the defendant-owner the responsibility for making repairs needed in the

structure of the building; and the jury could have found that the elevator fall which injured plaintiff resulted from a state of disrepair of that part of the building structure on which the elevator installation was seated.

2. The Court below erred in directing a verdict for the defendant-owner because, regardless of whether or not the lease is interpreted to put specifically upon the owner the responsibility for keeping the elevator in repair and in safe condition, the owner was responsible under the Elevator Regulation of the District of Columbia for doing so.

3. The Court below erred in directing a verdict for the defendant-owner, because the defendant-owner was responsible for the condition of the elevator as of the time the building was leased-out to the Government, there is evidence in the record which could reasonably support a jury verdict that the accident stemmed from the condition of the elevator pre-dating the commencement of the lease, and the jury could have found, if the trial Judge had permitted the case to go to it, that negligence of the defendant-owner with respect to the condition of the elevator pre-dating the lease was an essential contributing cause of the elevator accident in which plaintiff-appellant was injured.

4. Comparative analysis of decided cases in this area of the law shows that the defendant-owner in this case retained the responsibility under the lease for keeping in repair and in safe condition the elevator and the associated structural elements, bore the responsibility under the D. C. Elevator Regulations for the safe condition of these, and had the responsibility for any injury that a jury might find arose from the condition of the elevator prior to the moment when the premises were turned over to the Government-lessee.

ARGUMENT

1. The Court below erred in directing a verdict for the defendant-owner on the ground, that, under the lease, the defendant had no responsibility for the condition of the elevator at the time when the injury to plaintiff occurred:
 - a. Because the lease put upon the defendant-owner responsibility for providing continuously, during the occupancy of the building by the Government, elevators in good operating condition, and for maintaining the elevators in a state of repair and good working order and replacing them in whole or in part when, for any reason, they failed to remain in serviceable condition; while the lease put upon the Government only the responsibility for current maintenance and custodial services with respect to the elevators; and
 - b. Because the lease put upon the defendant-owner the responsibility for making repairs needed in the structure of the building, and the jury could have found that the elevator fall which injured plaintiff resulted from a state of disrepair of that part of the building structure on which the elevator installation was seated.

The basic rule for allocating responsibility over the condition of the elevator as between the defendant-owner and the Government-tenant was stated by the defendant himself in his pre-trial Motion for Summary Judgment, in which he points out that *Bowles v. Mahoney*, 91 U.S. App. D.C. 155, 202 F.2d 320 (1952), quoted with approval the following paragraph from *Security Savings and Commerce Bank v. Sullivan*, 49 App. D.C. 119, 120, 261 F.461 (1919):

... it is settled law that where the owner of premises by lease, parts with the entire possession and control of the premises, and the tenant either by express provision of the lease or by the silence of the lease on that subject, assumes liability for the keeping of the premises in proper repair, the tenant and not the owner will be liable in cases of an accident due to

negligence in allowing the premises, or any portion thereof, to get out of repair.

In the case at hand, the lease is not silent, but speaks directly on the question of whether the Government-tenant assumed liability for keeping the elevator in proper repair or left this responsibility squarely on the shoulders of the defendant-owner. Paragraph 6 of the Lease (Defendant's Exhibit 23) contains the provisions in point. Paragraph 6 of the Lease starts out by saying:

The Lessor shall furnish to the Government, during the occupancy of said premises, under the terms of this lease, as part of the rental consideration, the following:

The building and all appurtenances thereto belonging, including all operating and service facilities and equipment existing at the time of occupancy or agreed upon by the Government and the Lessor.

Obviously, under the heading of "all operating and service facilities and equipment", this provision requires the defendant-owner furnish the elevators in the building leased to the Government. Obviously, also, it requires the defendant to furnish the elevators during the entire period of occupancy by the Government under the lease; and to furnish elevators in continuously operating condition during the running of the Government's occupancy of the building. For, if at any time during the term of the lease the elevator is not in operating condition, the defendant-owner is falling down on his undertaking to furnish "during the occupancy of said premises, under the terms of this lease . . . all operating and service facilities and equipment". To furnish an elevator installation with an elevator that is not working, would be to furnish a useless shaft with some meaningless objects of steel and wood suspended in it; it would not be the furnishing of something that functions as an elevator—that provides the service of going up and going down.

Clearly, therefore, under this term of the lease, the defendant-owner, not the Government, was burdened with the responsibility of keeping the elevator in the functional state of a serviceable and operating elevator. It was for the defendant-owner to look to see, throughout the occupancy of his building by the Government, that the elevators were kept in such a condition that they did not break down, become inoperable, become unserviceable. This was not only a responsibility to repair the elevators if and after they broke down; but also a responsibility to tend to them and watch over their condition so as to prevent their breaking down. For, to the extent that the defendant-owner, by lack of preventive care of and guardianship over the elevators, permitted them to break down or become unserviceable, and suffered the building to remain without the services of the elevator, he would be violating his contract obligation to continuously provide to the Government a building with "operating and service facilities and equipment" in a state of functional integrity. In other words, during any period of time when the elevator was not operating, the Government would, in theory, be entitled to damages for non-performance by the defendant owner of his undertakings under the lease-contract. Thus, under the term of the lease above-quoted, the defendant-owner and not the Government-tenant "assumes liability for the keeping of the premises in proper repair", to use the words in the rule laid down by defendant's own counsel as cited above, and "will be liable in cases of an accident due to negligence in allowing the premises, or any portion thereof [in the case at hand, the elevator], to get out of repair." *Security Savings and Commerce Bank v. Sullivan*, 49 App. D.C. 119.

Paragraph 6 of the lease goes on in its next section to spell out the obligation of the defendant-owner to keep in necessary repair the walls, roof and structure of the building, the relationship of which to the issues presented by this appeal will be discussed later.

Then this next section goes on to say:

[The defendant-owner] shall replace in whole or in part any facilities and/or mechanical installations which through deterioration or faulty construction make it impossible to provide the services available or agreed upon at the time of the Government's occupancy of the leased premises.

That the phrase "facilities and/or mechanical installations" includes the elevator in the building is, of course, beyond the pale of doubt. The phrase "deterioration or faulty construction" covers everything that might go wrong with the elevator—whether the difficulty stems from the original construction of the elevator, or arises after the elevator is put into operation and as a result of its being in use. The term "replace in whole or in part" covers repairs that involve substituting new parts for defective or deteriorated and broken parts of the elevator, and also substituting an entire new elevator assembly or installation for the old. Finally, the concept of difficulties which "make it impossible to provide the services available or agreed upon" would seem to include not only complete operational and mechanical breakdowns of the elevator but also situations where little things are going wrong in the operation of the elevator so frequently that the elevator is not providing reasonably effective service in getting people and things up and down.

It follows from the above semantic examination that the defendant-owner retained the responsibility under the lease to take care of the elevators and see that they remained in good, effective operating condition, and to guard against every circumstance in the condition of the elevator that might cause it to break down or become unserviceable in terms of reasonably effective operation. The second provision of the lease here under consideration supplements the first provision discussed above, and the two together constitute

a complete expression of responsibility on the part of the defendant-owner for keeping the elevator in a state of repair and good working operation. Thus, the first provision says that the defendant-owner has responsibility for providing, over the life of the lease to the Government, working elevator facilities; and the second one renders this responsibility in more specific terms by saying that, should the elevator break down or assume a state or condition in which it cannot render reasonable service, the defendant is obligated to make the required repairs and replacements. In other words, the defendant-owner is responsible for providing a continuously working elevator and, should it stop working, get it back into that state. Thus, again applying the test cited by defendant himself, it is the defendant-owner, not the Government-defendant, who, under the lease, assumes liability for the keeping of the premises [in particular in this case, the elevator] in proper repair . . .and . . .will be liable in cases of an accident due to negligence in allowing the premises, or any portion thereof [again, the elevator, in this case] to get out of repair."

The next section of paragraph 6 of the lease speaks first of the responsibility on the defendant-owner to comply with municipal ordinances and regulations relating to buildings and their equipment, the relationship of which to the issues presented by this appeal will be discussed later. Then, paragraph 6 concludes by stating:

The Government shall, at its expense, furnish all necessary labor and material for the maintenance and custodial services of the building, including . . . maintenance of mechanical equipment . . .

The "maintenance" responsibility assumed by the Government in this provision, viewed in the context in which it is set, as to do with small-scale current-type operations such as furnishing "labor

and material" and provision of "custodial services". It has nothing to do with such things as provision of equipment and facilities, and making repairs on or replacing equipment and facilities to keep them in good safe operational condition. Maintenance has to do with such day-to-day functions as oiling, greasing and cleaning equipment, repacking bearings, replacing fuses, bulbs and fluorescent tubes, tightening and replacing screws, bolts, hinges and floor bolts, and the like. No doubt it includes minor repairs. But maintenance functions would not involve major repairs, that is to say, anything other than minor repairs.

Not only as a matter of verbal and definitional concept, but also by way of its location in paragraph 6 of the lease and its relation to the other provisions of paragraph 6 can the provision on maintenance functions be seen to involve nothing beyond minor repairs. Thus, as has been pointed out, paragraph 6 first contains a sequence of provisions laying responsibilities on the defendant-owner for providing and attending to the condition of the building and its fixtures: that is, to furnish on a continuous operational basis the building and its facilities and equipment; to take care of and repair where necessary the exterior walls, roof and structure of the building, and keep the building in a weathertight condition; to repair and replace any facilities and mechanical installations which fail to operate properly; and, to comply with all municipal ordinances and regulations relating to buildings and their equipment, including making such changes as required to bring such structure or equipment into conformity with the municipal legal requirements. Then, and only then, does paragraph 6 undertake to complete the picture of allocation of responsibilities, by speaking of the current day-to-day functions of "maintenance and custodial services of the building", and placing the responsibility for these on the current day-to-day occupant of the leased building—the Government. Thus, all responsibil-

ties for keeping the structure and its equipment in good repair are placed on the defendant-owner; the remaining responsibilities for keeping the building in a useable condition, having to do with "non-structural" aspects or routine maintenance and custodial operations, are placed on the Government-tenant.

It should be mentioned that paragraph 6 of the lease concludes by putting upon the Government responsibility for "alterations or additions to plumbing, heating and electrical facilities, partition work, floor covering, and *any other physical improvements required for the specific needs of the Government (italics supplied.)*" But this has to do with the provision of things beyond what the defendant-owner was required to provide when turning the building over to the Government at the beginning of the lease term. It has nothing to do with the allocation of responsibilities for repair of the building *or the equipment in it*, that was turned over to the Government.

Thus, the line-up of responsibilities in paragraph 6 of the lease is such that, as between the defendant-owner and the Government-tenant, it was the former who was obligated to keep the elevator in good condition and make basic repairs needed on it. And, consequently, it was the defendant-owner who would be liable for any accidents and injury resulting from negligent inattention to it when it fell out of repair, and from negligent failure to make repairs to keep it in proper and safe condition. Surely, it cannot be said that the responsibilities for maintenance and custodial services placed upon the Government-tenant at the tail-end of paragraph 6 in the lease give it responsibility for seeing to such repairs in the elevator installation as will avoid accidents of the type that happened in this case, where the elevator shaft (that is, axle) broke, the elevator dropped two and a half floors, the elevator became totally inoperable, and a new shaft or axle had to be machined and installed, a new babbitt or bearing made, and new steel cables put in, before the

elevator could be put back into operation again. Surely, it must rather be said that the responsibility for attending to repairs that would prevent such an accident as puts the elevator totally out of commission rests on the party upon whom paragraph 6 of the lease places the basic set of responsibilities for providing an elevator in good operating condition throughout the life of the lease, for repairing and replacing the elevator whenever it broke down or fell into unserviceable condition, and for complying with any municipal ordinances and regulations requiring that elevators be kept in good and safe operating condition.

The defendant-owner and his son-in-law agent testified on the trial that the Government never asked them to do anything so far as the elevator was concerned, and that they did not do anything to the elevator, or even send any men to examine it, from the beginning of the lease in 1957 to the time of the accident in 1961 (Tr. pp. 493-4, 523-5). This is merely a manifestation of the negligent inattention on the part of the defendant-owner, to the condition of the ancient elevator involved here; and a manifestation of his failure to pay heed to his responsibility under the lease to see that the elevator remained in a good, safe, operating condition. His obligation under the lease to watch out for the condition of the elevator and keep it in good repair did not come into play only when the Government called upon him; it did not require a call from the Government to activate it.

Nor does the fact that the Government's General Services Administration did some work on the elevator, even to the extent of replacing the broken shaft or axle involved in the accident in this case, vary the very clear-cut allocation of responsibilities spelled out in paragraph 6 of the lease. To the extent that this work went beyond routine maintenance and minor repairs, it merely reflects the fact that the General Services Administration had elevator machine

shops of its own where repair work could be done very expeditiously, and that the Government was anxious to get elevators back into service in buildings it was occupying without waiting for owner of the building, in this case, to arrange on the commercial market for elevator repair services. This is reflected in the following testimony by the elevator supervisor of the Government's General Services Administration who was responsible for the elevator in the building where the accident took place:

Q. . . . you mentioned that you and several other gentlemen repaired this over the weekend.

* * *

A. I think we worked through Friday night till Saturday, and of course, we all got kind of tired, and we went home and had a few hours' sleep. I think the machine shop had about three or four men working on it all the time. What I mean by that, I believe they had 2 men on and 2 men off, something like that, so that we could get this piece of equipment back in service as soon as possible. (Tr. pp. 280-1)

That the Government could have, under the lease, requested the defendant-owner to do the work is reflected in the testimony of the defendant-owner himself. When asked on cross-examination whether he was required to make major repairs, while the Government was required to take care of maintenance, he responded: "If they called us for a major repair, we were required to." (Tr. p. 507). In fact, the long-time operator of the elevator which broke and fell testified that personnel sent by Mr. Murray had come to examine the elevator a month before the accident (the elevator operator did not "give them the car" because they were not accompanied by General Services Administration personnel, as required). (Tr. pp. 67-8). Again, the Supervisory Engineer of the Elevator Design Section in the Public Buildings Service of General Services Administration testified that, when he was called to the elevator accident, he

attempted to contact the defendant-owner and then his son-in-law agent, but nobody was able to reach them (Tr. p. 76-26 and p. 76-30). (The inability to reach the defendant-owner is part of the reason why the Government went ahead and itself did the work of replacing the broken shaft or axle, as well as replacing the worn babbitt or bearing and the torn steel ropes or cables.) Mention might also be made of the testimony by the Supervisory Engineer of the Elevator Design Section, relating to a time subsequent to the elevator accident:

Q. Did you have any discussion with the landlord, Mr. Murray, regarding the elevator?

A. Yes, I did, at a later date. This was after we had repaired—not we, but Mr. Murray's agent had repairs—(At this point, counsel for the defendant objected, on the ground that this was not relevant to the elevator accident, and the trial Judge sustained this objection; although the testimony is relevant to the question of whether the defendant-owner retained elevator repair responsibilities under the lease, and hence may be considered by this appellate court as can any other testimony erroneously ruled out. (Tr. p. 76-38)

Finally, some testimony about the practice in connection with the allocation of elevator repair responsibilities between the defendant-owner and the Government-tenant might be noted. The Realty Officer in the General Services Administration who had responsibility for the negotiation of the lease between the defendant-owner and the Government-tenant testified under cross-examination as follows:

Q. Do you know who the employees were of General Services Administration assigned to perform repairs at the Stewart Building on behalf of General Services Administration?

A. No, I don't, because they would be under the Area Manager, sir.

Q. So you have no idea how the repairs were made or who made the repairs to the elevator?

A. I know generally how they are made. They are just made day to day repairs, not replacements.

Q. Not mechanics?

A. Only for greasing and keeping it in operation, not for the replacement of parts.

Q. But you don't know what was done at the Stewart Building?

A. No, I'm not a mechanic. I don't know, sir.

(Tr. pp. 198-9)

The General Services Administration employee who did maintenance and repair work on elevators in Government buildings and in private buildings leased by the Government, and who had responsibility for servicing the elevator in which the accident occurred, testified as a witness for the defendant and said the following under cross-examination:

Q. But isn't it true that all your function there was to grease and make repairs?

A. My job to oil, clean, grease and make repairs?

Q. No, I didn't say anything about repairs.

A. I am trying to repeat your question in order to answer it.

Q. Wasn't your function in respect to the Stewart Building solely to grease, oil, clean and perhaps put fuses in if a fuse blew?

A. Make minor repairs.

Q. No repairs actually?

A. Again, there, as I understand, it would depend on the terms of the lease. If the owner was held responsible for *major repairs* (italics supplied), he made them; if it was agreed between the owner and the Government that the Government had *full maintenance* (italics supplied) on the elevator, then we, the shop, would make the repairs if we were sufficiently equipped to do it. That is, if we had the equipment to make the necessary repairs.

Q. With respect to the Stewart Building, do you know what your role was there?

A. In as far as the lease is concerned, no sir.

Q. I'm not talking about the lease. Where you told what you were supposed to do in that building?

A. Maintain the elevator.

Q. Did that include the repairs?

A. *Minor repairs*, yes (italics supplied).

Q. What would constitute minor repairs?

A. Replacing of a shunt—this is a little wire that runs from one contact to another contact; to oil, grease, sweep the pit in the machine room, keep the hatchway clean, keep the main rails oiled—stuff like that.

Q. That was the limit of your duties with respect to the Stewart Building?

A. Yes, because I don't recall ever having any major repairs or breakdown in that building, so I can't answer truthfully. Other than this present breakdown we are talking of, I don't recall of any other major repair work in that building.

Q. I was, in addition, asking you whether you knew what you were supposed to do in the Stewart Building.

A. We did what we were supposed to do.

Q. But you were not instructed as to how far your maintenance was to go?

A. No, sir.

Q. You were never told that?

A. No, sir. Any time a question came up, I always told my supervisor who, in turn, then would take it up with the building manager, and he would look up the lease to see if we were required to do it.

Q. I see. But you yourself were never told how far you were supposed to go?

A. No. (Tr. pp. 261-3)

Thus, this witness is saying that, as the person responsible for the regular servicing of the elevator in question on behalf of the Government, his services extended only to maintenance-type repairs, and those responsible for determining the Government's role under the lease with respect to taking care of the elevator never assigned him any repair work other than of a minor sort.

Clearly, there is no basis in this case for considering whether there was a course of practice which varied the allocation under the lease of responsibilities for keeping the elevator in a state of good repair and safe operation. And, the trial Judge rested his ruling for the defendant on the lease, not on a course of practice contrary to the lease. In fact, the question of a course of practice going so far as to modify the legal obligations and responsibilities agreed upon in a lease would surely be a question for the Jury to decide upon—it could not be subject to a directed verdict by a trial Judge since, unlike a written lease whose words are open to definitive interpretation by a trial Judge, it would involve inferences to be drawn from conflicting and imprecise evidence about human conduct and actions in all their variety and ambiguous implications.

Under the terms of the lease, the defendant-owner is clearly responsible for the structural characteristics of the building, and for keeping these in repair and in safe condition, so that no injury to persons results from the state of these. Not only does the pertinent paragraph of the lease (number 6) open up by saying:

“The Lessor shall furnish to the Government, during the occupancy of said premises, under the terms of this lease . . . the building and all appurtenances thereto belonging.”

but the third sub-paragraph thereof states:

The Lessor shall make all necessary repairs to the exterior walls, roof and structure of the building, including exterior painting, required for the preservation thereof . . .

The word “exterior” modifies only the word “walls”, and not the words “roof” and “structure”. This is so because one would not refer to “exterior roof”; and because the term “exterior walls” already encompasses the exterior structure of the building. So the reference to “structure”, over and above “exterior walls”, must refer to the interior structure of the building.

Paragraph 6 goes on to say, in its fourth sub-paragraph:

The Lessor agrees to comply with all local ordinances, regulations and statutes relating to buildings . . . to make or have made such changes as required to bring such structure . . . into conformity therewith, and to pay all taxes, duties or charges levied or to be levied, on said premises during the term of this lease, except gas, electric current, water charges and fuel.

Finally, paragraph 6 of the lease concludes by saying:

The Government shall, at its expense, furnish all necessary labor and material for the maintenance and custodian services of the building, including interior painting . . . partition work . . . floor covering, and any other physical improvements required for the specific needs of the Government.

Again, it is made clear from this set-up of allocation of obligations that the basic responsibility for repairs, with respect to the structural aspects of the building, lies with the defendant-owner, while the responsibility for only routine, current, minor maintenance-type of repairs lies with the Government-lessee.

There is evidence in this case from which the jury could reasonably have found that the injury to plaintiff resulted from a structural defect or deterioration affecting the elevator installation. Thus, the Supervisory Engineer of the Elevator Design Section in the Public Buildings Service of General Services Administration, who testified as the basic witness for the plaintiff, stated the following:

Q. What are the structural support beams?

A. Structural support beams are the building beams.

Q. What did they look like? Did you look at them? Could you describe them?

A. They were heavy, what we call H-Section beams, like I beams. They are metal and formed just like an I.

Q. Are they mounted in the walls?

A. Yes, they are mounted in the walls.

Q. Can you describe how they were mounted in this situation?

A. The first piece at the top, where the bearing is, on the left side, is a machine support beam. Its purpose is to furnish support for that deflection sheave, and it was knocked out of line, out of alignment really, and it was tilted over. I would say, from 10 to 12 degrees out of alignment; and when I went back to look at it, to see what had taken place, I observed along the line of sight on the beam, I could see that it was loose in the wall.

You see, this beam (indicating) rests on what we call a bearing plate, or a beam seat. Mechanics call them beam seats. And this beam seat was worked out from the wall and had been working out for some while because the mortar was all powdered and was accumulated along-side the wall at the floor level.

Then I wanted to determine why that was. I found that those two beams supporting that sheave were not tied together. This is something rudimentary. But the support was not there. They were not mechanically or structurally tied together so that they could not work apart. On one side were the supports going back to the counter-weight sheave, and they were both on the same side of the beam, not crossing over to the left-hand beam. (Tr. pp.76-21 to 76-22)

A bit later on there was the following testimony from this same witness:

By MR. KLEIN

Q. Getting back to the cause of the break, you indicated that the seating in the beam had been working up and down.

A. Yes, sir.

MR. GALIHER: I object. I think counsel is now testifying, but nevertheless I withdraw my objection.

THE COURT: You may proceed.

THE WITNESS: The beam was working back and forth, and the reason for this was that the bearing metal was all gone, and the shaft was turning against the flange of the bearing itself, and this was due to the high degree of friction. It would force the beam back and forth each time, and this was the reason it worked loose.

Q. Was there some indication of how long that had been going on?

A. Well, from the pile of mortar there, it had been going on for a long time.

MR. GALIHER: Your Honor, I believe that that would be only speculation.

THE COURT: I will overrule the objection. (Tr. p. 76-25)

Thus, there is a basis on which reasonable minds might conclude that an essential contributing cause of the accident was the structural defect described in the words:

those two beams supporting that sheave were not tied together. This is something rudimentary. But the support was not there. They were not mechanically or structurally tied together so that they could not work apart.

And the jury could, without going beyond the scope of reasonable inference, conclude that, absent this structural defect, the elevator accident would not have occurred, at this time and with injury to this plaintiff.

Defendant-appellee's counsel cross-examined the above witness to impeach his testimony on the above aspect, and the following exchanges took place:

Q. What is this right here, sir (indicating)?

A. That's the machine supporting [beam]—supporting the end of it right here (indicating)—the machine to support. That goes back and shows that bearing plate just like this (indicating), in this manner. And here is [the] load bearing wall. (Tr. p. 76-46)

* * *

Q. Didn't you tell us that you found mortar down on the floor and bricks that were loose in this part (indicating) of the—

A. No, sir, I did not.

Q. Well, where did you tell us that you found mortar and bricks loose?

A. Along that beam, directly under the left pillow block.

Q. Isn't that just—

A. No, that's not the pillow block . . . the bearing plate would appear right here (drawing) where the beam entered a wall. This beam was imbedded into the wall. This is a wall underneath. It was brick wall, common brick wall with a mortar mix . . . and that mortar was piled up in this area, right here.

Q. So, if it was there before the accident, it would have been obvious to anyone who had come to that vicinity for the purpose of inspecting the elevator, would it not?

A. For someone. That's right, for a qualified person coming to make an inspection should have caught that.

Q. You mean that if I walked in there, I would not have been able to notice some mortar?

A. Again, I say if you notice that you are an exception because—

Q. Didn't you tell us that it was part of the beam, where it was connected with the wall?

A. It was where it connected with the wall. If you had seen that, you would immediately go up to see where it was coming from, and you would find, in the area between the brick and the plate and above it—the brick and the plate—the mortar was missing.

Q. And that was available and visible to the naked eye, was it not?

A. It was.

Q. And if any of the men from General Services Administration had visited that area on the day that the accident occurred, before the accident occurred, they would have had no difficulty, mechanics, in observing the mortar, and then observing it was pulled away from the beams, that factor?

A. Well, as I told you yesterday in the testimony, these grade mechanics that went up to the overhead were lower-grade mechanics or helpers, and their only purpose up there was to renew the grease in the bearings and oil up the governor and other parts to be oiled. They had no real training to discover anything like this.

Q. Who had the real training to inspect something like this in General Services Administration?

A. The only one authorized to make such inspections like that would be an inspector. (Tr. pp. 76-70 to 76-72)

* * *

Q. You suggested yesterday that perhaps the mortar out from the side, as you drew up here (indicating), had perhaps caused the shaft to pull away, is that right?

A. No, sir, I did not. I said that the eccentric motion of that shaft in the bearing caused that beam to move back and forth, and caused the mortar to fall out . . . Now, as the car would start into motion, this shaft would rock, first one way and then the other because of all that space . . . the shaft moved forward or moved back and in turn that moved this shaft forward or back, which in turn loosened the fastening in this wall. (Tr. pp. 76-65 to 76-76)

* * *

Q. If the facts in this case, Mr. Schwieder, disclose that prior to the happening of this accident at 1:15 on Friday afternoon, that there had been no pulling away of the pillow block housing or the beam supporting it, from the wall, if they disclose that there was no mortar in the area, and if they disclose that there was no evidence of any wearing away in the part of the shaft that broke, then it would be a fact, would it not, that what you found when you visited the scene after the accident must have come as a result of the accident, is that not a fact?

A. No, sir.

* * *

Q. Now, Mr. Schwieder, are you saying, then, that what caused the ropes to come off . . . was the fact that the beam supporting this pillow block has pulled to some degree away from the wall—

A. Yes, sir.

Q. —and that's what you are saying happened at the time the accident occurred?

A. That's where—That beam moved out and was at a distince angle after the accident. In fact, the pulley was resting against there.

Q. Well, at the time of the accident, when this shaft broke, this caused all of the wires to come down on top of the pillow block, did it not?

A. They rested partly on the pillow block.

Q. When the wires came down on the pillow block, that meant that instead of the Car Idler supporting this car, all of its weight was then put, for the first time, on this pillow block, is that not a fact?

A. The weight was put on that beam underneath, the structural beam. That's where I found the ropes.

Q. And isn't that exactly what caused it to become dislodged, the beam, with the mortar and the bricks that you have spoken of?

A. No, sir. When the sheave tilted and dumped off the ropes, it passed over that beam, right directly underneath the pillow block, and then came to rest down here on the structural member, where shown.

Q. If the testimony in this case shows that there was no mortar there before the breaking of the shaft, and that there was mortar there at the time you arrived after the accident had happened, would it not therefore be a fact that the mortar and the bricks, their dislodging and the pulling away of the beam, had to happen at the time the accident occurred?

A. No, sir, it would not.

Q. Well, if there was no mortar there before the accident, where could it have come from?

A. The mortar that was there was powdered to a fine degree and was discolored.

Q. You are simply saying, then, that based on what you found after the accident, it had to be there before the accident?

A. That's right.

Q. So, if there is testimony of witnesses to the contrary who actually went there and looked at it, you still disagree with them?

A. I do.

Q. —even though they might be people from your own department, General Services Administration.

A. I do, yes, sir.

Q. If there was a pulling away for a period of time before the accident, of the pillow block from the wall, from the brick wall, would that not have caused the shaft to be dislodged from the pillow block and dropped down?

A. No, sir.

Q. Would it not have caused the shaft to become dislodged and drop down without breaking?

A. No, sir. It would have to come out of there entirely.

Q. If this condition has existed, Mr. Schwieder, for any period of time prior to the accident, and if the Car Idler had been in this position (indicating), how would it have manifested itself so far as the operation of the car is concerned? . . . Let's say for a week before that accident.

A. There would be no appreciable notice except of a bumping in the car as the rope slipped on this sheave. This is called differentiation. The ropes have to travel at the same speed; and if they don't there is a distinct thumping in the car as the ropes that are slow slip to catch up with the ropes that are fast, and this would be prevalent.

Q. So, you would have had a bumping in the use of the car?

A. That's right.

Q. And you would have had a sound that was noticeable?

A. There would be a sound.

Q. There would be a sound. And this would have been a result of what you have described here?

A. That's right, before the shaft was broken, but as it was worn. (Tr. p. 76-78 to 76-82)

So, counsel for the defendant-appellee attacked the witness's testimony energetically, and tried to show that the evidence of structural defect came into being as a result of the accident. The witness, however, insisted that the loose mortar and brick, and the indications of the elevator support beam coming loose from the wall, resulted from the fact that:

The eccentric motion of that shaft in the bearing caused that beam to move back and forth, and caused the mortar to fall out . . . this shaft would rock, first one way and then the other because of all that space . . . which in turn loosened the fastening in this wall.

and, as he had stated earlier, the fact that the beam was susceptible to moving and rocking back and forth, one way and then the other, was because:

Those two beams supporting that sheave were not tied together . . . the support was not there. They were not mechanically or structurally tied together so that they could not work apart. (Tr. p. 76-22)

Counsel for defendant-appellee then brought out that, in a pre-trial deposition, the witness had failed to mention the indications of structural defect. The exchange went on as follows:

BY MR. GALIHER:

Q. . . . MR. KLEIN [asked:] "Do you want to know how the accident happened or is this clear to you?"

Then the lawyer from my office . . . replied: Well, I think that—I don't know. I think you have spelled it out fairly well in here. I guess it was due mainly to age. At least you feel that way, is that right?"

THE WITNESS: That's right.

BY MR. GALIHER:

Q. And you answered, "It was old age, yes, sir, just deterioration over a period of time, you know, just continual wear until at last it was exhausted. This is it." Were you asked that question and did you answer that way?"

* * *

A. That statement is true. There was the true condition of that elevator.

Q. Were you asked that question?

A. Very old and it was not very well maintained.

MR. GALIHER: I ask that that go out, your Honor.

THE COURT: The only question was: Did you make this statement as contained in the deposition?

* * *

THE WITNESS: Well, I said that.

BY MR. GALIHER:

Q. That was your complete statement concerning how the accident had happened?

A. That's right.

Q. And no one inhibited you in any way at that time from giving your answer, as you chose?

A. No, sir. (Tr. pp. 76-87 to 76-88)

The counsel for defendant-appellee then pointed out that, at a previous, although aborted, trial of this cause, the witness had been asked by the Court: "Could you determine what caused the shaft to break?"; and he had answered:

Yes, sir, the bearing was completely worn out and the shaft came to rest upon that pillow block.

... after a number of years of wear, it had consumed all of this babbitt and the shaft came to rest upon the steel pillow block. This set up a very high friction, and the shaft gradually ground away against this pillow block until at last it could not support the weight any more and it fractured. (Tr. p. 76-89)

Then the following exchange took place:

[Q.] Do you remember being asked that question and answering that way?

A. Yes, sir.

Q. And you said absolutely nothing, did you, Mr. Schwieder, about any mortar or any bricks being loose at the time of that trial, did you, Mr. Schwieder?

A. No, I did not. It probably was a slip.

MR. GALLIHER: I think you have answered my question.

THE COURT: If he wants to explain, he may do so.

THE WITNESS: At the time I testified and immediately after I answered that question, I realized that there were some other things, and when the trial ended I sat down and wrote all of these conditions as I remembered them, and I have got a copy of that today.

Q. And you had never previously written those up until 1966, although this accident happened in 1961?

A. I had notes to that effect in my note book that I carry with me on jobs.

Q. Did you ever turn in records to your superiors with respect to that, saying anything about mortar?

A. There was nothing, as far as I can remember, in my reports. I think, if you have a copy of my report—I haven't—it's too long since, and my files, when I went back to the office after being retired, my successor had removed those files.

Q. Well, isn't it a fact that you made no reference and you know you made no reference to any mortar or any brick.

A. I made no reference at that time.

Q. And you were asked additional questions after the questions and answers that I read to you, were you not, in your testimony before Judge Holtzoff?

* * *

A. Yes, sir.

Q. Again, you made no mention of any mortar or any bricks?

A. No, sir. (Tr. pp. 76-90 to 76-92)

Thus counsel for defendant-appellee raised an issue as to the exact nature of the witness's testimony concerning how the elevator accident came about; but this would be an issue for the jury. The counsel did not in any way cancel out or invalidate or render incompetent the witness's testimony that a structural defect was a significant contributing cause of the accident. Indeed, it would have been possible for the jury to conclude that there was no contradiction between the witness's testimony prior to the trial below and his testimony at the trial; and that the rational relationship between them is as follows: the bearing wore out; this caused the shaft assembly to rock; and the structural defect of the supporting beams

not being tied together magnified the effect of this, with the result that the shaft broke. But, the trial Judge, by his ruling of a directed verdict for the defendant-appellee, prevented the jury from possibly finding that negligence on the part of the defendant-owner with regard to the structural condition of the building beams caused the elevator accident, even though the lease placed upon the defendant-owner the responsibility for the condition of the structural aspects of the building.

2. The Court below erred in directing a verdict for the defendant-owner because, regardless of whether or not the lease is interpreted to put specifically upon the owner the responsibility for keeping the elevator in repair and in safe condition, the owner was responsible under the Elevator Regulations of the District of Columbia for doing so.

Even assuming the lease is properly interpreted as not putting upon the defendant-owner the responsibility for keeping the elevator in repair and in safe condition, he nevertheless had the responsibility under the D. C. Elevator Regulations for doing so. The Elevator Regulations, effective July 1, 1939, "constitute the Elevator Code for the District of Columbia, and may be so designated in all proceedings thereunder." (See Promulgation of Rules and Regulations at outset of the Elevator Code). The Promulgation page of the Elevator Code also states that it is issued pursuant to Act of Congress in order "to regulate the construction, repair, and operation of elevators within the District of Columbia, and to prescribe means of security necessary to protect life and limb." The Foreword to the Elevator Code contains the following statements:

Purpose. - The purpose of these regulations is to prescribe rules necessary to safeguard the lives, limbs, and health of the workers concerned in the installation, operation, and maintenance of such elevators,

escalators, and dumb-waiters, and the general public riding thereon.

Responsibility. - The responsibility of complying with the provisions of these regulations is placed upon the owner of the building in which the elevator, escalator, or dumb-waiter is located and also upon any person or corporation having beneficial use of such installation.

Clearly, under the above wording, the responsibility upon the defendant-owner for keeping the elevator in repair and in safe condition is in addition to any responsibility that there might be on the Government-lessee either on the basis of an interpretation of the lease, or on the basis of the above wording of the Elevator Code. In other words, the assignment of responsibility by the Elevator Code is not in the disjunctive; it does not say the responsibility for the safe condition of elevators is placed on building owners ~~for~~ the beneficial users of buildings. The words "and also" in the paragraph on *Responsibility* under the Elevator Code clearly provides for concurrent responsibility upon both sides to the leasing-out of a building. To put it another way, even provisions in a lease specifically putting the responsibility upon the lessee for keeping elevators in repair and in safe condition would not lift from the lessor-owner of a building the responsibility placed upon him under the Elevator Code. Recently, this Court made a definitive interpretation on this point of concurrent responsibility under the D. C. building regulations in its decision in *Landella Kanelos v. Milton Kettler*, U. S. Court of Appeals for the District of Columbia Circuit, No. 21,215, Decided October 2, 1968 saying:

Prior to the advent of the Housing Regulations, we drew upon the common law for precedents in cases of this type. "Absent any statutory or contract duty," we had said, "the lessor is not responsible for

an injury resulting from a defect which developed during the term." Here we do not find a contractual mandate to repair but, as we held correspondingly in *Whetzel v. Jess Fisher Management Company*, [108 U.S. App. D.C. 385, 282 F.2d 943 (1960)] the Housing Regulations did impose maintenance obligations upon appellee which he was not free to ignore.

* * *

In *Whetzel*, we announced that Sections 2301 and 2501 "impose . . . obligations which are extended to both the landlord and tenant," and it is clear enough that the same consequences attach equally to Section 2505. Thus, we find, as we did similarly in *Whetzel*, that these three provisions tax appellee with "a duty of care toward [his] tenants. This duty can be satisfied either by making the necessary repairs or by terminating use of the premises as a place of human habitation." And "breach of that duty, we reaffirm, "is . . . at least evidence of negligence."

Moreover, even without the benefit of this reasoning as to concurrent responsibility upon owner-lessor and tenant-lessee, the defendant-owner in the case at hand was responsible for meeting the obligation of the Elevator Regulations to keep the elevator in repair and in a safe condition; for, the lease here specifically made him so. It stated, in the fourth sub-paragraph of paragraph 6:

The Lessor agrees to comply with all local ordinances, regulations and statutes relating to buildings and their equipment, to make or have made such changes as required to bring such structure or equipment into conformity therewith . . .

One further note might usefully be made in relation to the Elevator Regulations. It states, additionally, in the Foreword:

Other regulations. - In all matters not specifically covered by these regulations the provisions of all other building regulations and of all regulations of other departments of the Government of the District of Columbia affecting the lives, limbs, and general health of the public shall govern.

This brings in the responsibility of the defendant-owner with regards to any building structure aspects that the jury might have found was an essential contributing cause of the elevator accident in which plaintiff-appellant was injured; and underlines the point made earlier in the Argument that the trial Judge's ruling directing a verdict for the defendant-appellee prevented the jury from possibly finding that negligence of the defendant with respect to building structural aspects contributed significantly to the elevator accident and injury to plaintiff-appellant.

In any event, in the light of the defendant-appellee's responsibilities under the Elevator Regulations for keeping the elevator in repair and in safe condition, it was error for the trial judge to direct a verdict for the defendant-appellee and deprive the jury of the opportunity to find that negligence on the part of the defendant with respect to the condition of the elevator led to the accident in which plaintiff was injured.

3. The Court below erred in directing a verdict for the defendant-owner, because the defendant-owner was responsible for the condition of the elevator as of the time the building was leased-out to the Government, there is evidence in the record which could reasonably support a jury verdict that the accident stemmed from the condition of the elevator pre-dating the commencement of the lease, and the jury could have found, if the trial Judge had permitted the case to go to it, that negligence of the defendant-owner with respect to the condition of the elevator pre-dating the lease

was an essential contributing cause of the elevator accident in which plaintiff-appellant was injured.

It is unquestioned that, however the lease is interpreted, the defendant-owner was responsible for the condition of the elevator in the leased-out building as of the time he turned the building over to the Government. Therefore, he would be responsible for any deterioration in the condition of the elevator that continued and progressed during the running of the lease and constituted an essential contributing cause to the elevator accident in which the plaintiff-appellant was injured. There is evidence in the record which could reasonably support a jury verdict that the accident stemmed from the condition of the elevator pre-dating the commencement of the lease. Thus the Supervisory Engineer for the Elevator Design Section of the General Services Administration, whose testimony is mentioned directly above, testified that the elevator in question was "a discontinued manufactured item, and most likely was in there for 30 or 35 years" (Tr. p. 76-16); that the breaking of the shaft which caused the elevator fall "was the result of just deterioration of the bearing, and it had occurred over a long period of time" (Tr. p. 76-23); that the phenomenon of the beam working back and forth and working loose from the wall setting "had been going on for a long time" (Tr. p. 76-25); that the bright worn spots on the elevator buffer pad made by the striking of the counter-weights, which was a contributing factor of the accident, had occurred "over a period of time. The buffer was striking at various spots and had worn the metal to a very bright and shining condition" (Tr. pp. 76-60 to 76-61); that the elevator accident was due to "old age . . . just deterioration over a period of time . . . just continual wear until at last it was exhausted" (Tr. p. 76-87); that the elevator was "very old and and it was not very well maintained" (Tr. pp. 76-88); and, that the elevator accident occurred because "after a number of years of wear, it had consumed all of this babbitt and the shaft came to rest upon

the steel pillow block. This set up a very high friction, and the shaft gradually ground away against this pillow block until at last it could not support the weight any more and it fractured" (Tr. pp. 76-89 to 76-90). A Government inspection report was approved by defendant-appellee, and introduced into evidence on the condition of the elevator just before it was turned over to the Government-lessee, stating: "This equipment is in very poor state of repair throughout . . . This elevator due to age and lack of maintenance will not give adequate service if this building is fully occupied." (Tr. pp. 169-70; see also pp. 187-8). The testimony of the Government's realty officer who negotiated the lease of the building in question was that this report was prepared right after the Government occupied the building; and that, when the building was turned over to the Government, the elevator was not in good operating condition and "was not in order" (Tr. p. 193).

Counsel for the defendant-appellee introduced contradicting evidence to the effect that the elevator was in good condition when it was delivered to the Government under the lease. But this leaves the question for the jury. And, the trial Court, by its ruling of a directed verdict for the defendant-appellee, prevented the jury from possibly finding that negligence of the defendant with respect to the condition of the elevator as of before the commencement of the lease-term was an essential contributing cause of the accident in which plaintiff was injured.

4. Comparative analysis of decided cases in this area of the law shows that the defendant-owner in this case retained the responsibility under the lease for keeping in repair and in safe condition the elevator and the associated structural elements, bore the responsibility under the D. C. Elevator Regulations for the safe condition of these, and had the responsibility for any injury that a jury might find arose

from the condition of the elevator prior to the moment when the premises were turned over to the Government-lessee.

Analysis of opinions in past decided cases in this area of the law yields results that are directly in line with the above argument. In assessing past decisions, reference will be made to, and analysis directed at, the cases quoted and cited in the *Points and Authorities in Support of Motion for Summary Judgment* and in the *Memorandum of Defendant* submitted by the present appellee-owner himself in the stages of this case before the trial below. This will be done because, with these citations by the defendant in mind, the pre-trial Judges of this case turned down the defendant's Motion for Summary Judgment which was based on the assertion that the defendant had no duty under the lease to keep the elevator and associated structural aspects in repair and in a safe condition; whereas the ruling in the trial below which is here being appealed served to reverse the pre-trial denial and, in effect, to grant that previous motion of defendant for summary judgment.

The basic case cited by defendant himself in his previous arguments is that of *Bowles v. Mahoney*, mentioned at the outset of the Argument in this brief for appellant. The key quotation from that case, as previously offered by the defendant-appellee, was taken as the very text for appellant's argument in this brief. Appellee's prior *Memorandum of Defendant* which was submitted to the trial Judge below, quotes other portions of the opinion in the *Bowles* case. Thus it quotes the following paragraph:

We have seen that Mrs. Bowles *had not agreed to repair or maintain the demised premises*. It is not suggested that she fraudulently concealed from Gaither, at the time the lease was executed, a defect in the retaining wall which was known to her and not to him; in fact it is not suggested that the wall was

defective when the lease was made in 1936. The first indication of a defective condition was the crack in the wall which Mrs. Armstrong noticed in 1946. So, if the crack indicated a defective condition, it was one which arose during the term of the lease. *Absent any statutory or contract duty, the lessor is not responsible for an injury resulting from a defect which developed during the term.* Johnson v. Kurn, 8 Cir., 1938, 95 F.2d 629, 632. (emphasis supplied by appellant)

This quotation proves by contrast, the validity of the appellant's argument. For, unlike the situation in the quotation above, the owner of the premises in the case at hand did have a contract duty under the lease, had agreed in the lease to repair the elevator and its associated structural elements, and had agreed to "maintain the demised premises" except for routine current maintenance and custodial care. Furthermore, as has been shown, the owner even bore the statutory duty to keep the elevator in repair and in safe condition.

Appellee's *Memorandum* also quoted the following paragraph from the *Bowles* case:

To recapitulate: Mrs. Bowles was not guilty of fraud or concealment by failing to disclose at the time of leasing, defects in the wall of which she had knowledge; *she had not agreed to repair*; she had conveyed entire possession and control of the premises, including the appurtenant passageway and retaining wall, to Luke Gaither. We conclude that Gaither took the premises and appurtenances thereto as they were in 1936, and assumed whatever risk there might have been in occupying them. It was his duty to maintain the wall in good condition. Mrs. Bowles, therefore, would not have been liable

to Gaither had he been injured when the wall collapsed on March 30, 1948. *Lawler v. Capital City Life Insurance Co.*, 1933, 62 App. D.C. 391, 68 F.2d 438; *Fraser v. Kruger*, *supra*. Since the plaintiff, being the invitee of the tenant, stood in his right, Mrs. Bowles owed him no duty and is not liable for his injury. (Emphasis supplied by appellant.)

Again, in the present case, the crucial facts are opposite to those cited in the quotation; the defendant-owner had agreed to repair; it was not the duty of the Government-lessee to maintain the elevator in good condition, but only to provide labor and materials for routine current maintenance and custodial care of it; and the defendant-owner was liable to the Government-lessor, under the lease, for keeping the elevator continually in a safe operational and operating condition, and therefore was liable to the plaintiff, standing, as employee, in the right of the government-lessee.

Defendant-appellee also quotes the following paragraph of the *Bowles* opinion:

The fact that B. F. Saul Company had caused repairs to be made to the premises did not obligate Mrs. Bowles to continue to make them and did not make her a covenantor to repair. *Shegda v. Hartford-Connecticut Trust Company*, 1944, 131 Conn. 186, 38 A.2d 668; *Ginsburg v. Jacobson*, 1931, 276 Mass. 108, 176 N.E. 918; *Potter v. New York O. & W.R. Co.*, 233 App. Div. 578, 253 N.Y.S. 394, aff'd 1933, 261 N.Y. 489, 185 N.E. 708.

This, too, far from supporting the defendant-appellee's position, has the contrary effect. It shows that there is no slight hope even in the notion that any course of practice under the lease between the defendant-owner and Government-lessee put upon the Government the responsibility for repairs (in the sense of major repairs, other

than minor repairs) to the defective elevator in which plaintiff-appellant was injured. Of course, if the law permitted such a judgment, it would be for the jury to determine whether the actions and conduct of the parties to a lease went to far and were so definitive as to warrant the inference that a course of practice had arisen contrary to the terms of the lease.

Finally, the defendant-appellee had quoted the following paragraph from *Bowles*:

In the foregoing, we have treated the case as though the accident had occurred on the premises owned by Mrs. Bowles and leased to Gaither. That the child was injured in the parking area and not on the premises proper, we regard as immaterial for the reason that Mrs. Bowles owed Gaither no greater duty with regard to maintaining the wall in the parking area than with respect to keeping the actual premises in repair. As to the latter we have seen she owed him no duty at all.

This simply underscores the concept that liability to a visitor or employee injured on leased premises belongs to whichever party to the lease had the legal duty to keep the injury-producing feature in repair; and, in the case at hand, it is clear that that was the defendant-owner rather than the Government-lessee.

The above quotations from the *Bowles* case are at 91 U.S. App. D.C. 158-9, 202 F.2d 323-4. In that case, this Court was careful to state in its opinion: "The lease, a copy of which is in the record, does not obligate the landlord to make repairs. There is no statute imposing that duty on a landlord." 91 U.S. App. D.C. 157, 202 F.2d 322. In the case at hand, by contrast, there are specific provisions in the lease putting upon the defendant-owner the obligation to make repairs to the elevator in order to keep it in a continually operating condition and to repair or replace it when, because of

defects or deterioration, it did not provide satisfactory service. Also in the case at hand, the defendant-owner was, as has been shown above, under a legal obligation stemming from statute to comply with the requirements of the D.C. Elevator Code that elevators be kept in a safe state of repair.

In this latter connection, there is considerable moral and legal force in the dissent by Judge Bazelon in the *Bowles* case, in which he argued that there was only one situation in which the owner of leased-out property should be relieved of the duty of keeping it in repair so injury to people should not occur upon it; and that was when the lease had expressly shifted that responsibility to the lessee. Judge Bazelon said in his dissent:

The key to the decision of the court, relieving both the landlord and the District of Columbia from liability, lies in its adherence to the rule at common law that "absent any statutory or contract duty, the lessor is not responsible for an injury resulting from a defect which developed during the term." I think that rule is an anachronism [sic] which has lived on through stare decision alone rather than through pragmatic adjustment to "the felt necessities of our time." I would therefore discard it and cast the presumptive burden of liability upon the landlord. This, I think, is the command of the realities and mores of our day.

Courts have gradually recognized, at least in part, that the exalted position which the landlord held at early common law is discordant with the needs of a later day It follows that, at least in the absence of express provision to the contrary, a landlord who leases property should be held to a continuing obligation to exercise reasonable care to provide that which the parties intended he should provide, namely a safe and habitable dwelling. Applying this view to the

circumstances of the present case, the landlord would be liable for the injuries to little Ralph Mahoney as the tenant's invitee. For the lease did not expressly make the tenant responsible for repairs and there is no doubt that the owner of this dilapidated dwelling failed to exercise reasonable care to prevent the collapse of the cracked retaining wall. (91 U.S. App. D.C. 160-61, 202 F.2d 325-6)

Of course, in the case this court now has before it, the injured invitee upon the owner's premises does not need the help of a new rule of law that the owner is liable for the safe condition of his leased-out premises unless he has specifically shifted the responsibility to the lessee. For, the lease in the case at hand, puts upon the Government-lessee only the residual responsibility for routine current minor maintenance and custodial care of the elevator, after assigning to the defendant-owner all the basic responsibility for keeping a continually effective elevator in operation and fixing it up when defects or deterioration undermine its capability to render proper service. But, Judge Bazelon's cry in dissent is worth harkening to in relation to the suggestion put forward earlier that the owner is responsible for complying with the D.C. Elevator Code even if the lease had not specifically put upon him the responsibility for keeping the elevator in repair and in safe condition.

In *Daly v. Toomey*, 212 F.Supp. 475 (1963), the United States District Court for the District of Columbia also opined at p. 478 that:

The law in this jurisdiction is that, absent any statutory or contractual duty, a lessor is not responsible for an injury resulting from a defect which developed during the term of the lease.

Again, this rule does not relieve the defendant-lessor of responsibility in the case here because there was a contractual duty placed upon him by the lease to keep the elevator in a safe and non-defec-

tive state during the term of the lease. The Court, in *Daly v. Toomey*, ended up by finding the lessor responsible for injury to a third party, stating at pp. 478-9:

There being no statute, and under the foregoing construction of the lease, no contractual obligation on the party of the Toomeys to make repairs, they would be absolved from liability under the general law above referred to, except for the fact that the defect or condition here involved did *not* develop during the term of the lease, but was in existence at the time of its commencement and long prior thereto. Under such circumstances, the law immunizing landlords from responsibility for injuries resulting from defects has no application . . .

This underlines the assertion by appellant that the trial judge below should not have directed a verdict for the defendant, but should have, at the least, let the case go to the jury to determine if the injury to plaintiff arose from negligence of the defendant-owner with respect to the condition of the elevator and associated structural elements dating from the time the lease to the Government went into effect. Similarly, the U.S. District Court for the District of Columbia stated in *Hilleary v. Earle Restaurant*, 109 F.Supp. 829 (1952) at p. 835:

The exception to the general rule of non-liability of the lessor has been stated:

Where premises are leased for the public or semi-public purposes, and at the time of the lease conditions exist on the premises which render them unfit for the purpose intended or constitute a nuisance, and the landlord knows or by the exercise of reasonable care ought to know of the conditions, and a third person suffers injuries on account thereof, the landlord is held liable because such third person is there at the invitation of the land-

lord as well as the tenant. * * * *Fraser v. Kurger*, 8 Cir., 298 F. 693, 696. See also *Junkermann v. Tilyou Realty Co.*, 213 N.Y. 404, 108 N.E. 190, L.R.A. 1915F, 700.

So, this is another instance illustrating that the landlord, even though he has parted with possession of the premises under a lease, may be held responsible and liable for injury to third parties on the leased premises where the injury arises from unsafe conditions existing at the time of the lease.

In *Lawler v. Capital City Life Ins. Co.*, 68 F.2d 438, 62 App. D.C. 391 (1933), the Court of Appeals of the District of Columbia said at pp. 438-9:

The defense was that the union and not the insurance company was in possession of the entire property to which the stairway in question have access; that the company not having agreed to repair, the duty of maintenance was upon the tenant in possession; and that if any right of action accrued from the accident, it lay against the union, and not against the insurance company.

* * *

In this situation the case is governed by the general rule applicable between landlord and tenant, where it is long established that upon the letting of a house there is no implied warranty by the landlord that the house is safe; or well built; or reasonably fit for the occupancy intended. The tenant is a purchaser of an estate in the property he rents, and he takes it under the gracious protection of *caveat emptor*.

This situation, of course, is changed by an express agreement of the landlord to repair and maintain . . .

This focuses on the crucial importance of an agreement to repair on part of landlord, an agreement which was present on the part of the defendant-owner in the case now before this Court.

In the recent case of *McKay v. Fairbairn*, 120 U.S. App. D.C. 250, 345 F.2d 739 (1965), this Court again decided, in an action by a third party for injuries sustained on leased-out property, that "because the lease did not impose upon the landlord the duty to repair, there could be no breach of duty" (p. 742). The Court cited *Bowles v. Mahoney* as quoting Security Savings & Commercial Bank v. Sullivan (see outset of Argument above), and said at p. 742:

Here, the landlord parted with the entire possession of the house, and did not agree to make repairs, so it was the duty of the tenant to keep the premises in proper repair.

In his Memorandum of Defendant supplied by appellee to the Court below, it is stated:

As a general proposition, at least in the absence of statute, it has been held that the liability of the landlord to an employee of his tenant for injury resulting from the negligent construction, maintenance, or operation of elevators in leased premises depends upon whether the landlord has retained control over that part of the premises containing the elevator. *White v. Ellison Realty Corp.* (1950) 5 N.J. 228, 74 A.2d 401, 19 A.L.R.2d 264, the court stating that "in this class of case, the primary question presented for the jury's consideration and determination is the measure of control retained by the landlord over that which caused the injury."

Thus, where a landlord is out of possession and control of leased premises, it has been generally held that he is not liable to an employee of his tenant injured by reason of the defective condition of an elevator therein.

The Memorandum of Defendant then lists a number of cases from various other jurisdictions as supporting this formulation of the rule of law here. Of course, they do no such thing. For, the formulation of the defendant leaves out the crucial element that, in addition to being out of possession and control of the leased premises, the landlord must not have agreed to make repairs. Indeed, the Memorandum for Defendant proceeds then to impeach his own formulation of the rule by saying:

The above principles of law represent the rule of law followed by the Courts of the District of Columbia in *Bowles v. Mahoney*, 91 U.S. App. D.C. 155, p. 159, the court said:

We have seen Mrs. Bowles had not agreed to repair or maintain the demised premises . . . Absent any statutory or contract duty, the lessor is not responsible for an injury resulting from a defect which developed during the term . . .

Two other decisions in this jurisdiction might be noted, although they involve actions against landlords by the tenants on leased property rather than by third parties. In *Walker & Dunlop, Inc. v. Gladden*, 47 A.2d 510 (1946), the Municipal Court for the District of Columbia said at p. 512:

It is well settled that generally there is no obligation on the part of the landlord to make ordinary repairs. *Paratino v. Gildenhorn*, 55 App. D.C. 271, 4 F.2d 938. And the lease in this case did not impose upon the landlord the duty of making repairs.

This opinion only focuses again on the contrary situation in the case at hand, in that here the lease *did* impose on the landlord the duty of making repairs. In *Karl W. Corby Co., v. Zimmer*, 99 A.2d 485 (1953), the Municipal Court of Appeals for the District of Columbia said at p. 487:

It is an established rule that where the landlord has no existing obligation to repair premises, a promise by him to repair is *nudum pactum* unless supported by a new consideration. *Grace v. Williams* supra [36 Ohio App. 569, 173 N.E. 448]; *Schiff v. Pottlitzer*, 51 Misc. 611, 101 N.Y.S. 249; *Fortner v. Moses*, D.C. Mun. App., 49 A.2d 660

This re-emphasizes that there can be no legal basis in the case at hand for ruling that any course of practice on the part of the Government-tenant relieved the defendant-landlord of his duty under the lease to keep the elevator in repair and in safe condition.

CONCLUSION

For the foregoing reasons, the decision of the trial judge should be reversed and this case remanded for a trial on the merits so that a jury may decide:

1. Whether there was negligence on the part of the defendant-owner in relation to his responsibility under the lease to keep in repair and in safe condition the elevator in which injury to the appellant-plaintiff occurred;
2. Whether there was negligence on the part of the defendant-owner in relation to his responsibility under the lease to keep the structural aspects of the building in repair and in proper condition, with the result that the elevator accident and injury to appellant-plaintiff resulted therefrom;
3. Whether there was negligence on the part of the defendant-owner with respect to the condition of the elevator at the time he leased his building to the Government, so that the elevator accident and injury to appellant-plaintiff resulted from this pre-lease condition; or

4. Whether there was negligence on the part of the owner in relation to his responsibilities under the D.C. Elevator Regulations to keep in repair and in safe condition the elevator in which injury to the appellant-plaintiff occurred.

Respectfully submitted,

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